

# STATE OF NEW YORK

5261--B

2015-2016 Regular Sessions

## IN ASSEMBLY

February 13, 2015

Introduced by M. of A. PAULIN, DINOWITZ, GALEF, ZEBROWSKI, GOTTFRIED, BLAKE -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, CROUCH, DUPREY, SKARTADOS -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to patient self-determination at end of life

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new article  
2 28-F to read as follows:

### ARTICLE 28-F

#### PATIENT SELF-DETERMINATION ACT

##### Section 2899-d. Definitions.

3 2899-e. Written request for medication.

4 2899-f. Written request signed and witnessed.

5 2899-g. Attending physician responsibilities.

6 2899-h. Counseling referral.

7 2899-i. Medical record documentation requirements.

8 2899-j. Residency requirement.

9 2899-k. Right to information.

10 2899-l. Immunity.

11 2899-m. Not suicide; no duty to aid.

12 2899-n. Limitations on actions.

13 2899-o. Health care facility exceptions.

14 2899-p. Effect on construction of wills, contracts and statutes.

15 2899-q. Insurance policies; prohibitions.

16 2899-r. Protection of patient choice at end of life.

17  
18 EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
19 [-] is old law to be omitted.

LBD07446-06-5

1 2899-s. Safe disposal of unused medications.

2 2899-t. Death certificate.

3 2899-u. Statutory construction.

4 2899-v. Severability.

5 § 2899-d. Definitions. As used in this article:

6 1. "Adult" means an individual who is twenty-one years of age or  
7 older.

8 2. "Attending physician" means the physician who has primary responsi-  
9 bility for the care of the patient and treatment of the patient's termi-  
10 nal disease.

11 3. "Bona fide physician-patient relationship" means a treating or  
12 consulting relationship in the course of which a physician has completed  
13 a full assessment of the patient's medical history and current medical  
14 condition, including a personal physical examination.

15 4. "Capable" means that a patient has the ability to understand, make  
16 and communicate health care decisions to a physician, including communi-  
17 cation through persons familiar with the patient's manner of communicat-  
18 ing if those persons are available.

19 5. "Counseling" means one or more consultations as necessary between a  
20 state licensed psychiatrist or psychologist and a patient for the  
21 purpose of determining that the patient is capable and not suffering  
22 from a psychiatric or psychological disorder or depression causing  
23 impaired judgment.

24 6. "Health care facility" shall include hospitals, nursing homes and  
25 residential health care facilities as defined in section twenty-eight  
26 hundred one of this chapter.

27 7. "Health care provider" means a person, partnership, corporation,  
28 facility, or institution, licensed or certified or authorized by law to  
29 administer health care or dispense medication in the ordinary course of  
30 business or practice of a profession.

31 8. "Impaired judgment" means that a person does not sufficiently  
32 understand or appreciate the relevant facts necessary to make an  
33 informed decision.

34 9. "Palliative care" means health care treatment, including interdis-  
35 ciplinary end-of-life care, and consultation with patients and family  
36 members, to prevent or relieve pain and suffering and to enhance the  
37 patient's quality of life, including hospice care under article forty of  
38 this chapter.

39 10. "Patient" means a person who is twenty-one years of age or older,  
40 a resident of New York state, and under the care of a physician.

41 11. "Physician" means an individual licensed to practice medicine in  
42 New York state.

43 12. "Terminal illness or condition" means an illness or condition  
44 which can reasonably be expected to cause death within six months,  
45 whether or not treatment is provided.

46 § 2899-e. Written request for medication. 1. An adult who is capable,  
47 is a resident of this state and has been determined by the attending  
48 physician and consulting physician to be suffering from a terminal  
49 illness or condition, and who has voluntarily expressed his or her wish  
50 to die, may make a written request for medication for the purpose of  
51 ending his or her life in a humane and dignified manner in accordance  
52 with the provisions of this article.

53 2. No person shall qualify under the provisions of this article solely  
54 because of age or disability.

55 § 2899-f. Written request signed and witnessed. 1. A valid request for  
56 medication under the provisions of this article shall be in such form as

1 prescribed by the department, signed and dated by the patient and  
2 witnessed by at least two individuals who, in the presence of the  
3 patient, attest that to the best of their knowledge and belief the  
4 patient is capable, acting voluntarily, and is not being coerced to sign  
5 the request.

6 2. One of the witnesses shall be a person who is not:

7 (a) A relative of the patient by blood, marriage or adoption;

8 (b) A person who at the time the request is signed would be entitled  
9 to any portion of the estate of the patient upon death under any will or  
10 by operation of law; or

11 (c) An owner, operator or employee of a health care facility where the  
12 patient is receiving medical treatment or is a resident.

13 3. The patient's attending physician at the time the request is signed  
14 shall not be a witness.

15 § 2899-g. Attending physician responsibilities. 1. The attending  
16 physician shall:

17 (a) Make the determination of whether a patient has a terminal illness  
18 or condition, is capable, and has made the request voluntarily;

19 (b) Request that the patient demonstrate New York state residency;

20 (c) Refer the patient for counseling, if appropriate, pursuant to  
21 section twenty-eight hundred ninety-nine-h of this article; and

22 (d) Fulfill the medical record documentation requirements of section  
23 twenty-eight hundred ninety-nine-i of this article.

24 2. Subject to section twenty-eight hundred ninety-nine-h of this arti-  
25 cle, an attending physician who makes the determination that the patient  
26 has a terminal illness or condition, is capable and has made a request  
27 for medication as provided in section twenty-eight hundred ninety-nine-e  
28 of this article, the attending physician shall either:

29 (a) Dispense the medication directly, including ancillary medication  
30 intended to facilitate the desired effect to minimize the patient's  
31 discomfort, provided the attending physician has a current Drug Enforce-  
32 ment Administration certificate and complies with any applicable rule or  
33 regulation; or

34 (b) With the patient's written consent:

35 (i) Contact a pharmacist and inform the pharmacist of the  
36 prescription; and

37 (ii) Deliver the written prescription personally or by mail to the  
38 pharmacist, who will dispense the medications to either the patient, the  
39 attending physician or an expressly identified agent of the patient.

40 § 2899-h. Counseling referral. If in the opinion of the attending  
41 physician a patient may be suffering from a psychiatric or psychological  
42 disorder or depression causing impaired judgment, such physician shall  
43 refer the patient for counseling. No medication to end a patient's life  
44 in a humane and dignified manner shall be prescribed until the person  
45 performing the counseling determines that the patient is not suffering  
46 from a psychiatric or psychological disorder or depression causing  
47 impaired judgment and is capable.

48 § 2899-i. Medical record documentation requirements. The following  
49 shall be documented or filed in the patient's medical record:

50 1. All oral requests by a patient for medication to end his or her  
51 life in a humane and dignified manner;

52 2. All written requests by a patient for medication to end his or her  
53 life in a humane and dignified manner;

54 3. The attending physician's diagnosis and prognosis, determination  
55 that the patient is capable and acting voluntarily;

1 4. A report of the outcome and determinations made during counseling,  
2 if performed; and

3 5. A note by the attending physician indicating that all requirements  
4 under the provisions of this article have been met and indicating the  
5 steps taken to carry out the request, including a notation of the medi-  
6 cation prescribed.

7 § 2899-j. Residency requirement. Only requests made by New York state  
8 residents under the provisions of this article shall be granted. Factors  
9 demonstrating New York state residency shall include but shall not be  
10 limited to:

11 1. Possession of a New York state driver's license;

12 2. Registration to vote in New York state;

13 3. Evidence that the person owns or leases property in New York state;

14 or

15 4. Filing of a New York state tax return for the most recent tax year.

16 § 2899-k. Right to information. A physician who engages in discussions  
17 with a patient under section twenty-nine hundred ninety-seven-c of this  
18 chapter related to the risks and benefits of palliative care and end-of-  
19 life options in the circumstances described in this article shall not be  
20 construed to be assisting in or contributing to a patient's independent  
21 decision to self-administer a lethal dose of medication, and such  
22 discussions shall not be used to establish civil or criminal liability  
23 or professional disciplinary action.

24 § 2899-l. Immunity. (a) A physician shall not be subject to any civil  
25 or criminal liability or professional disciplinary action if the physi-  
26 cian prescribes to a patient with a terminal illness or condition medi-  
27 cation to be self-administered for the purpose of hastening the  
28 patient's death or for any other actions performed in good faith compli-  
29 ance with the provisions of this article.

30 (b) A pharmacist shall not be subject to any civil or criminal liabil-  
31 ity or professional disciplinary action if the pharmacist dispenses such  
32 medication.

33 § 2899-m. Not suicide; no duty to aid. (a) A patient with a terminal  
34 illness or condition who self-administers a lethal dose of medication  
35 pursuant to the provisions of this article shall not be considered to be  
36 a person who is suicidal.

37 (b) (1) No person shall be subject to civil or criminal liability  
38 solely for being present when such patient with a terminal illness or  
39 condition self-administers a lethal dose of medication or for not acting  
40 to prevent the patient from self-administering a lethal dose of medica-  
41 tion.

42 (2) No person, whether or not otherwise obligated by law or profes-  
43 sional practice to do so, shall be under any duty to render assistance  
44 to such patient or to otherwise act to resuscitate such patient after he  
45 or she self-administers a lethal dose of medication.

46 § 2899-n. Limitations on actions. 1. A physician, nurse, pharmacist,  
47 or other person shall not be under any duty, by law or contract, to  
48 participate in the provision of a lethal dose of medication to a  
49 patient, provided that reasonable efforts shall be made to refer the  
50 patient to a physician, nurse or pharmacist who may participate in the  
51 provision of a lethal dose of medication to a patient.

52 2. A health care facility or health care provider shall not subject a  
53 physician, nurse, pharmacist, or other person to discipline, suspension,  
54 loss of license, loss of privileges, or other penalty for actions taken  
55 in good faith reliance on the provisions of this article or refusals to  
56 act under this article.

1       3. Except as otherwise provided herein, nothing in this article shall  
2 be construed to limit liability for civil damages resulting from negli-  
3 gent conduct or intentional misconduct by any person.

4       § 2899-o. Health care facility exceptions. A health care facility may  
5 prohibit a physician from writing a prescription for a dose of medica-  
6 tion intended to be lethal for a patient who is a resident in its facil-  
7 ity and intends to use the medication on the facility's premises,  
8 provided the facility has notified the physician in writing of its poli-  
9 cy with regard to the prescriptions. Notwithstanding section twenty-  
10 eight hundred ninety-nine-1 of this article, any physician who violates  
11 a policy established by a health care facility under this section may be  
12 subject to sanctions otherwise allowable under law or contract.

13       § 2899-p. Effect on construction of wills, contracts and statutes. 1.  
14 No provision in a contract, will or other agreement, whether written or  
15 oral, to the extent the provision would affect whether a person may make  
16 or rescind a request for medication to end his or her life in a humane  
17 and dignified manner, shall be valid.

18       2. No obligation owing under any currently existing contract shall be  
19 conditioned or affected by the making or rescinding of a request by a  
20 person for medication to end his or her life in a humane and dignified  
21 manner.

22       § 2899-q. Insurance policies; prohibitions. 1. A person and his or her  
23 beneficiaries shall not be denied benefits under a life insurance policy  
24 for actions taken in accordance with this article.

25       2. The sale, procurement, or issue of any medical malpractice insur-  
26 ance policy or the rate charged for the policy shall not be conditioned  
27 upon or affected by whether the physician is willing or unwilling to  
28 participate in the provisions of this article.

29       § 2899-r. Protection of patient choice at end of life. A physician  
30 with a bona fide physician-patient relationship with a patient with a  
31 terminal illness or condition shall not be considered to have engaged in  
32 unprofessional conduct and shall not be the subject of discipline if:

33       1. the physician determines that the patient is capable and does not  
34 have impaired judgment;

35       2. the physician informs the patient of palliative care and end-of-  
36 life options pursuant to subdivision two of section twenty-nine hundred  
37 ninety-seven-c of this chapter and the physician prescribes a dose of  
38 medication that may be lethal to the patient;

39       3. the physician advises the patient of all foreseeable risks related  
40 to the prescription;

41       4. the physician advises the patient of all alternatives to aid in  
42 dying; and

43       5. the patient makes an independent decision to self-administer a  
44 lethal dose of the medication.

45       § 2899-s. Safe disposal of unused medications. The department shall  
46 adopt rules and regulations providing for the safe disposal of unused  
47 medications prescribed under this article.

48       § 2899-t. Death certificate. In the event that a patient self-admin-  
49 isters a lethal dose of medication in accordance with the provisions of  
50 this article, the death certificate shall indicate that the cause of  
51 death was the underlying terminal illness or condition of the patient.

52       § 2899-u. Statutory construction. Nothing in this article shall be  
53 construed to authorize a physician or any other person to end a  
54 patient's life by lethal injection, mercy killing, or active euthanasia.  
55 Action taken in accordance with this article shall not be construed for  
56 any purpose to constitute suicide, assisted suicide, attempted suicide,

1 promoting a suicide attempt, mercy killing, or homicide under the law,  
2 including as an accomplice or accessory or otherwise.

3 § 2899-v. Severability. If any clause, sentence, paragraph, section or  
4 part of this article shall be adjudged by any court of competent juris-  
5 isdiction to be invalid, such judgment shall not affect, impair or invali-  
6 date the remainder thereof, but shall be confined in its operation to  
7 the clause, sentence, paragraph, section or part thereof, directly  
8 involved in the controversy in which such judgment shall have been  
9 rendered.

10 § 2. This act shall take effect immediately.

BILL NUMBER: A5261B

SPONSOR: Paulin (MS)

TITLE OF BILL:

An act to amend the public health law, in relation to patient self-determination at end of life

PURPOSE:

To provide that a physician who prescribes in compliance with the provisions of this article medication to a terminally ill patient to be self-administered for the purpose of hastening the patient's death will not be subject to civil or criminal liability or professional disciplinary action.

SUMMARY OF PROVISIONS:

Section 1 amends the Public Health Law by adding a new article 28-F, the Patient Self-Determination Act, comprised of the following sections:

§ 2899-d sets forth definitions.

§ 2899-e sets forth the circumstances in which an adult may make a written request for medication for the purpose of ending his or her life in accordance with the provisions of this article.

§ 2899-f provides that a valid request for medication shall be in such form as prescribed by the Department of Health (DOH), signed and dated by the patient and witnessed as provided in such section. This section also prohibits the patient's attending physician at the time the request is signed from acting as a witness and identifies other individuals who cannot act as one of the witnesses.

§ 2899-g sets forth the responsibilities of the attending physician.

§ 2899-h provides that if in the opinion of the attending physician a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, such physician shall refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner shall be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment and is capable.

§ 2899-i sets forth the items that must be documented or filed in the patient's medical record.

§ 2899-j provides that only requests by New York state residents under the provisions of this article may be granted and sets forth the factors included that demonstrate New York state residency.

§ 2899-k provides that a physician who engages in discussions with a patient under section 2997-c of the Public Health Law related to the risks and benefits of palliative care and end-of-life options in the circumstances described in this article will not be construed to be assisting in or contributing to a patient's independent decision to self-administer a lethal dose of medication. Such discussions will not

be used to establish civil or criminal liability or professional disciplinary action.

§ 2899-1 provides that a physician shall not be subject to civil or criminal liability or professional disciplinary action if the physician prescribes to a terminally ill patient medication to be self-administered for the purpose of hastening the patient's death or for any other actions performed in good faith compliance with the provisions of this article. The section also provides that a pharmacist will not be subject to any civil or criminal liability or professional disciplinary action if the pharmacist dispenses such medication.

§ 2899-m provides that a terminally ill patient who self-administers a lethal dose of medication pursuant to this article will not be considered a person who is suicidal and no person shall be subject to civil or criminal liability solely for being present when a terminally ill patient self-administers a lethal dose of medication or for not acting to prevent the patient from self-administering a lethal dose of medication. In addition, no person, whether or not otherwise obligated by law or professional practice to do so, shall be under any duty to render assistance to such patient or to otherwise act to resuscitate such patient after he or she self-administers a lethal dose of medication.

§ 2899-n provides that a physician, nurse, pharmacist, or other person shall not be under any duty by law or contract to participate in the provision of a lethal dose of medication to a patient, provided that reasonable efforts shall be made to refer the patient to a physician, nurse or pharmacist who may participate in the provision of a lethal dose of medication to a patient. A health care facility or health care provider shall not subject a physician, nurse, pharmacist, or other person to discipline, suspension, loss of license, loss of privileges, or other penalty for actions taken in good faith reliance on the provisions of the article or refusals to act under this article. Except as otherwise provided, nothing in this article will be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

§ 2899-o provides that a health care facility may prohibit a physician from writing a prescription for a dose of medication intended to be lethal for a patient who is a resident in its facility and intends to use the medication on the facility's premises, provided the facility notified the physician in writing of its policy with regard to the prescriptions. Any physician who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 2899-p provides that no provision in a contract, will or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, shall be valid. The section further provides that no obligation owing under any currently existing contract will be conditioned or affected by the making or rescinding of a request by a person for medication to end his or her life in a humane and dignified manner.

§ 2899-q provides that a person and his or her beneficiaries shall not be denied benefits under a life insurance policy for actions taken in accordance with this article. In addition, the sale, procurement or issue of any medical malpractice insurance policy or the rate charged

for the policy shall not be conditioned on or affected by whether the physician is willing or unwilling to participate in the provisions of this article.

§ 2899-r provides that a physician with a bona fide physician-patient relationship with a terminally ill patient shall not be considered to have engaged in unprofessional conduct and shall not be subject to discipline if all of the requirements set forth in this section have been met: (i) the physician determines that the patient is capable and does not have impaired judgment; (ii) the physician informs the patient of palliative care and end-of-life options pursuant to section 2997-c(2) of the Public Health Law and the physician prescribes a dose of medication that may be lethal to the patient; (iii) the physician advises the patient of all foreseeable risks related to the prescription; (iv) the physician advises the patient of all alternatives to aid in dying; and the patient makes an independent decision to self-administer a lethal dose of the medication.

§ 2899-s provides for the adoption of rules and regulations by the DOH for the safe disposal of unused medications prescribed under this article.

§ 2899-t provides that in the event a patient self-administers a lethal dose of medication in accordance with the provisions of this article, the death certificate shall indicate that the cause of death was the underlying terminal illness or condition of the patient.

§ 2899-u provides that this article shall not be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Action taken in accordance with this article shall not be construed for any purpose to constitute suicide, assisted suicide, attempted suicide, promoting a suicide attempt, mercy killing, or homicide under the law, including as an accomplice or accessory or otherwise.

§ 2899-v provides the severability clause.

Section 2 sets forth the effective date.

#### JUSTIFICATION:

The highly publicized planned death of Brittany Maynard has highlighted the need for terminally ill patients to be able to access aid in dying. Patients with a terminal illness or condition seek the ability to choose how and when they die. These patients, who are mentally competent and without impaired judgment, should not be forced to relocate to another state or to leave the country to control how they end their lives and to die with the dignity, peace and comfort they seek and that they believe will come with shortening the dying process.

According to HealthDay/Harris poll findings released in December 2014, 74% of American adults believe that terminally ill patients in great pain should have the right to end their lives (14 percent were opposed). In addition, 54% of physicians in the U.S. believe that physician-assisted dying should be permitted (31% opposed) according to a recent survey of physicians conducted by Medscape.

The Patient Self-Determination Act will enable mentally competent, terminally ill patients to choose to self-administer medication to bring about a peaceful death and provide the physicians who provide the medi-

cation and who comply in good faith with the provisions of the Act safe harbor from civil and criminal liability and professional disciplinary action. Under current law, a person who attempts suicide is deemed to mean that he poses a substantial risk of physical harm to himself which would allow his involuntary admission to a hospital. Furthermore, under current law, any person who intentionally causes or aids another person to attempt or to commit suicide will be charged with a felony offense.

Aid in dying must be distinguished from assisted suicide. Assisted suicide laws are designed to stop individuals from assisting mentally incompetent or unbalanced, despondent persons kill themselves. This is different from mentally capable, terminally ill patients who want to live but in light of their imminent death, wish to choose to die on their own terms.

Four states, Oregon, Vermont, Washington and Colorado allow physician assisted dying. Aid in dying legislation recently passed the New Jersey Assembly and legislators in additional states, including Florida, Indiana, Maryland, Minnesota, Missouri, New Hampshire, and Pennsylvania have committed to introduce such legislation. Aid in dying legislation is supported by the American Public Health Association, the American Medical Women's Association, the American Medical Student Association, the American College of Legal Medicine, Lambda Legal, and Compassion & Choices.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Effective immediately.