

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2257

S.P. 885

In Senate, January 30, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

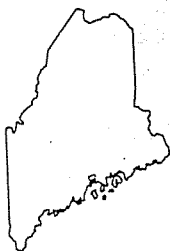
JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CAHILL of Sagadahoc
Cosponsored by Representative COLES of Harpswell.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act Regarding the Terminally Ill.



Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 18-A MRSA §5-701, sub-§(b), ¶(2-A) and (4-A) are enacted
4 to read:

6 (2-A) "Health care facility" means a hospital, nursing
home, home health agency or hospice.

8 (4-A) "Medically assisted death" means a medical service
10 that will end the life of a patient and has been requested
12 and authorized in accordance with this Part.

14 Sec. 2. 18-A MRSA §5-701, sub-§(b), ¶(5), as enacted by PL 1991,
c. 441, §1, is amended to read:

16 (5) "Person" means an individual, corporation, business
18 trust, estate, trust, partnership, association, joint
venture, government, governmental subdivision or agency,
20 health care facility or any other legal or commercial entity.

22 Sec. 3. 18-A MRSA §5-702-A is enacted to read:

24 §5-702-A. Declaration related to medically assisted death

26 (a) An individual who is at least 18 years of age who
28 suffers from a terminal condition and who retains the ability to
30 make and communicate decisions may execute a declaration
32 governing the individual's election to obtain a medically
34 assisted death. An executed declaration that is delivered to the
36 individual's attending physician initiates the review process
38 established in section 5-715. The declaration must be signed by
40 the declarant and witnessed by 2 individuals. If the declarant
is physically unable to sign, the declarant may direct another
person to sign, and both the direction and the signature must be
witnessed by 2 individuals. A person who has or will have a
claim against the estate of the declarant under any will or
codicil in existence at the time of the declaration or by
operation of this Title is not eligible to be a witness. A
person may not in any circumstance request a medically assisted
death for another person.

42 (b) A declaration must be made on the following form:

44 DECLARATION

46 I am informed that I suffer from a terminal condition, which
48 means a condition that is irreversible and incurable and
50 that, in the opinion of my attending physician, is likely to
52 result in my death within a relatively short time. In order
that I may die in a dignified, painless and humane manner, I
have elected to obtain a medically assisted death. I
understand that my physician will not be able to assist me

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unless my terminal condition is verified by 2 consulting physicians. I also understand that I may revoke this declaration either in writing or by an oral statement to a physician at any time and that if I revoke this declaration I will have to make a new declaration if I again choose a medically assisted death.

Signed this day of,

Signature

Address

Date of birth or social security number

Person signing for declarant if declarant is physically unable to sign:

Signature

Address

The declarant:

... Voluntarily signed this writing in our presence.

... Voluntarily authorized a person to sign for the declarant in our presence, and that person signed for the declarant in our presence.

Witness

Address

Witness

Address

NOTE: Maine law (18-A MRSA §5-701) defines "medically assisted death" as a medical service that will end the life of a patient and has been requested and authorized in accordance with Maine law.

If you have questions about the meaning of this form, you are encouraged to seek the advice of a doctor or lawyer.

(c) A physician or other health-care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant. This subsection does not affect the duty of a physician or other health-care provider under section 5-708.

2 **Sec. 4. 18-A MRSA §§5-703 and 5-705**, as enacted by PL 1989, c.
330, §1, are amended to read:

4 **§5-703. When declaration operative**

6 A declaration made pursuant to section 5-702 becomes
8 operative when it is communicated to the attending physician and
10 the declarant is determined by the attending physician to be in a
12 terminal condition and no longer able to make or communicate
14 decisions regarding administration of life-sustaining treatment.
16 When the declaration becomes operative, the attending physician
and other health-care providers shall act in accordance with its
provisions and with the instructions of a designee under section
5-702, subsection (a) or comply with the transfer requirements of
section 5-708.

18 A declaration made pursuant to section 5-702-A becomes
20 operative after certification by 2 consulting physicians pursuant
to section 5-715.

22 **§5-705. Recording determinations and declarations**

24 Upon determining that a declarant is in a terminal
26 condition, the attending physician who knows of a declaration
pursuant to section 5-702 shall record the determination and the
28 terms of the declaration in the declarant's medical record. Upon
notice of certification by 2 consulting physicians pursuant to
30 section 5-715, the attending physician shall record the notice of
certification and the declaration made pursuant to section
32 5-702-A in the declarant's medical record.

34 **Sec. 5. 18-A MRSA §5-707, sub-§(h)** is enacted to read:

36 (h) A person other than the individual may not request a
medically assisted death under section 5-702-A for that
38 individual.

40 **Sec. 6. 18-A MRSA §5-709, sub-§§(a) to (c)**, as enacted by PL
1989, c. 830, §1, are amended to read:

42 (a) In the absence of knowledge of the revocation of a
44 declaration, a person is not subject to civil or criminal
46 liability, or discipline for unprofessional conduct, for carrying
48 out the declaration or the instructions of a designee under
section 5-702, subsection (a) or for carrying out the
instructions of a declaration under section 5-702-A pursuant to
the requirements of this Part.

50 (b) A physician, health care facility or other health-care
52 provider, whose action under this Part is in accord with
reasonable medical standards, is not subject to criminal or civil

2 liability, or discipline for unprofessional conduct, with respect
3 to that action.

4 (c) A physician, health care facility or other health-care
5 provider, whose decision about the validity of consent under
6 ~~section~~ sections 5-702-A and 5-707 is made in good faith, is not
7 subject to criminal or civil liability, or discipline for
8 unprofessional conduct, with respect to that decision.

10 **Sec. 7. 18-A MRSA §5-710**, as enacted by PL 1989, c. 830, §1,
11 is amended to read:

12 **§5-710. Penalties**

14 (a) A physician or other health-care provider who willfully
15 fails to transfer the care of a patient in accordance with
16 section 5-708 ~~is guilty of~~ commits a Class E crime.

18 (b) A physician who willfully fails to record a
19 determination of a terminal condition or the terms of a
20 declaration in accordance with section 5-705 ~~is guilty of~~ commits
21 a Class E crime.

24 (c) An individual who willfully conceals, cancels, defaces,
25 or obliterates the declaration of another individual without the
26 declarant's consent or who falsifies or forges a revocation of
27 the declaration of another individual ~~is guilty of~~ commits a
28 Class E crime.

30 (d) An individual who falsifies or forges the declaration
31 of another individual, made pursuant to section 5-702 or
32 willfully conceals or withholds personal knowledge of a
33 revocation under section 5-704, ~~is guilty of a declaration made~~
34 pursuant to section 5-702 commits a Class B crime.

36 (d-1) An individual who falsifies or forges a declaration
37 of another individual made pursuant to section 5-702-A or
38 willfully conceals or withholds personal knowledge of a
39 revocation under section 5-704 of a declaration made pursuant to
40 section 5-702-A commits a Class A crime.

42 (e) A person who requires or prohibits the execution of a
43 declaration as a condition for being insured for, or receiving,
44 health-care services ~~is guilty of~~ commits a Class E crime.

46 (f) A person who coerces or fraudulently induces an
47 individual to execute a declaration ~~is guilty of~~ commits a Class
48 E crime.

50 (g) The penalties provided in this section do not displace
51 any sanction applicable under other law.

2 **Sec. 8. 18-A MRSA §5-711, sub-§§(a), (b) and (g),** as enacted by PL
1989, c. 830, §1, are amended to read:

4 (a) ~~Neither the~~ The decision to withhold or withdraw ~~her~~ or
6 the actual withholding or withdrawal of life-sustaining treatment
in accordance with this Part ~~which~~ or the provision of a medical
8 service as part of a procedure for medically assisted death in
accordance with this Part that results in the death of an
10 individual ~~shall--be--deemed--to~~ does not constitute, for any
purpose, a suicide or homicide.

12 (b) The making of a declaration pursuant to section 5-702
14 or 5-702-A does not affect the sale, procurement, or issuance of
a policy of life insurance or annuity, nor does it affect,
16 impair, or modify the terms of an existing policy of life
insurance or annuity. A policy of life insurance or annuity is
18 not legally impaired or invalidated by the withholding or
withdrawal of life-sustaining treatment from an insured, or by a
20 medically assisted death, notwithstanding any term to the
contrary.

22 (g) This Part does not condone, authorize, or approve
24 mercy-killing, euthanasia or suicide, except for medically
assisted death authorized in accordance with section 5-702-A and
26 certified in accordance with section 5-715.

28 **Sec. 9. 18-A MRSA §5-715** is enacted to read:

30 **§5-715. Review procedure for medically assisted death**

32 An attending physician who determines that an individual is
34 able to competently communicate the individual's wishes, that an
individual is suffering from an incurable and irreversible
36 condition that is likely to lead to the death of the individual
within a relatively short time and who has received a declaration
38 made by the individual pursuant to section 5-702-A shall arrange
for an examination of the individual by 2 consulting physicians.
40 The consulting physicians may be selected by the individual but
may not be related to the individual or have a claim against the
42 estate of the individual outside of a claim for professional
services rendered to the individual.

44 The consulting physicians shall separately examine the
individual, review the individual's medical records and apply the
46 independent medical judgment of each as to whether the individual
has an incurable and irreversible condition that is likely to
48 result in the individual's death within a relatively short time.
Each consulting physician shall certify that physician's findings
50 to the attending physician. If both consulting physicians find
such a condition, the attending physician, any other physician
52 and any health care facility are authorized to assist the
individual with a medically assisted death. Any assistance that

2 is provided must ensure that the individual's death is dignified,
3 painless and humane.

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6 **STATEMENT OF FACT**

8 This bill amends the living will statute to allow medically
9 assisted deaths in certain limited circumstances.

10
11 The bill allows a person who has been diagnosed with a
12 terminal condition that is likely to lead to death within a
13 relatively short period of time and whose condition has been
14 certified by 2 consulting physicians to request a medically
15 assisted death. Minors and incompetent persons, including
16 persons in a persistent vegetative state, are not eligible to
17 request this procedure. No individual may request a medically
18 assisted death for another individual.

20 Two consulting physicians must independently certify the
21 individual's condition before a medically assisted death may
22 proceed. If both consulting physicians certify that the
23 individual has an incurable and irreversible condition, the
24 individual's attending physician, any other physician and any
25 health care facility are authorized to assist the individual with
26 a medically assisted death.