

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1420

S.P. 453

In Senate, May 3, 1993

An Act Concerning the Terminally Ill.

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.

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
8 home, home health agency or hospice.

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

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

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

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

30 §5-702-A. Declaration related to medically assisted death

32 (a) An individual at least 18 years of age who suffers from
34 a terminal condition and who retains the ability to make and
36 communicate decisions may execute a declaration governing that
38 individual's election to obtain a medically assisted death. An
40 executed declaration delivered to the individual's attending
42 physician initiates the review process established in section
44 5-715. The declaration must be signed by the declarant and
46 witnessed by 2 individuals. If the declarant is physically
48 unable to sign, the declarant may direct another person to sign,
50 and both the direction and the signature must be witnessed by 2
52 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.

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

DECLARATION

I am informed that I suffer from a terminal condition, which
means a condition that is irreversible and incurable and
that, in the opinion of my attending physician, is likely to
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
unless my terminal condition is verified by 2 consulting

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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**, as amended by PL 1991, c. 719, §6,
is further amended to read:

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

6 A declaration made pursuant to section 5-702 becomes
operative when it is communicated to the attending physician and
8 the declarant is determined by the attending physician to be in a
terminal condition or persistent vegetative state as defined in
10 section 5-701 and no longer able to make or communicate decisions
regarding administration of life-sustaining treatment. When the
12 declaration becomes operative, the attending physician and other
health-care providers shall act in accordance with its provisions
14 and with the instructions of a designee under section 5-702,
subsection (a) or comply with the transfer requirements of
16 section 5-708.

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

22 **Sec. 5. 18-A MRSA §5-705**, as amended by PL 1991, c. 719, §7,
is further amended to read:

24 **§5-705. Recording determination of terminal condition or**
26 **persistent vegetative state and declaration**

28 Upon determining that a declarant is in a terminal condition
or persistent vegetative state as defined in section 5-701, the
30 attending physician who knows of a declaration pursuant to
section 5-702 shall record the determination and the terms of the
32 declaration in the declarant's medical record. Upon notice of
certification by 2 consulting physicians pursuant to section
34 5-715, the attending physician shall record the notice of
certification and the declaration made pursuant to section
36 5-702-A in the declarant's medical record.

38 **Sec. 6. 18-A MRSA §5-707, sub-§(h)** is enacted to read:

40 (h) A person may not in any circumstance request a
medically assisted death for another person.

42 **Sec. 7. 18-A MRSA §5-709, sub-§§(a) to (c)**, as enacted by PL
44 1989, c. 830, §1, are amended to read:

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

2 (b) A physician, health care facility or other health-care
3 provider, whose action under this Part is in accord with
4 reasonable medical standards, is not subject to criminal or civil
5 liability, or discipline for unprofessional conduct, with respect
6 to that action.

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

12 **Sec. 8. 18-A MRSA §5-710**, as enacted by PL 1989, c. 830, §1,
13 is amended to read:

14 **§5-710. Penalties**

15 (a) A physician or other health-care provider who willfully
16 fails to transfer the care of a patient in accordance with
17 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.

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

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

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

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

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

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

4 **Sec. 9. 18-A MRS §5-711, sub-§§(a), (b) and (g), as enacted by PL**
6 **1989, c. 830, §1, are amended to read:**

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

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

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

30 **Sec. 10. 18-A MRS §5-715 is enacted to read:**

32 **§5-715. Review procedure for medically assisted death**

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

46 The consulting physicians shall separately examine the
48 individual, review the individual's medical records and apply the
independent medical judgment of each as to whether the individual
50 has an incurable and irreversible condition that is likely to
result in the individual's death within a relatively short time.
52 Each consulting physician shall certify that physician's findings

2 to the attending physician. If both consulting physicians find
3 such a condition, the attending physician, any other physician
4 and any health care facility are authorized to assist the
5 individual with a medically assisted death. Any assistance that
6 is provided must ensure that the individual's death is dignified,
7 painless and humane.

8 **Sec. 11. Statutory referendum procedure; submission at statewide**
9 **election; form of question; effective date.** This Act must be submitted
10 to the legal voters of the State of Maine at a statewide election
11 to be held on the Tuesday following the first Monday of November
12 following passage of this Act. The municipal officers of this
13 State shall notify the inhabitants of their respective cities,
14 towns and plantations to meet, in the manner prescribed by law
15 for holding a statewide election, to vote on the acceptance or
16 rejection of this Act by voting on the following question:

18 "Shall a terminally ill person be permitted to have medical
19 assistance on dying if 2 physicians independently certify
20 that the person has an incurable and irreversible condition
21 that is likely to lead to that person's death within a
22 relatively short time?"

24 The legal voters of each city, town and plantation shall
25 vote by ballot on this question and designate their choice by a
26 cross or check mark placed within a corresponding square below
27 the word "Yes" or "No." The ballots must be received, sorted,
28 counted and declared in open ward, town and plantation meetings
29 and returns made to the Secretary of State in the same manner as
30 votes for members of the Legislature. The Governor shall review
31 the returns and, if it appears that a majority of the legal votes
32 are cast in favor of the Act, the Governor shall proclaim that
33 fact without delay, and the Act takes effect 30 days after the
34 date of the proclamation.

36 The Secretary of State shall prepare and furnish to each
37 city, town and plantation all ballots, returns and copies of this
38 Act necessary to carry out the purpose of this referendum.

40 STATEMENT OF FACT

42 This bill amends the living will laws to allow medically
43 assisted deaths in certain limited circumstances.

46 The bill allows a person who has been diagnosed with a
47 terminal condition that is likely to lead to death within a
48 relatively short period of time and whose condition has been
49 certified by an attending physician and 2 consulting physicians
50 to request a medically assisted death. Minors and incompetent
persons, including persons in a persistent vegetative state, are

not eligible to request this procedure. An individual may not
2 request a medically assisted death for another individual.

4 Two consulting physicians must independently certify the
individual's condition before a medically assisted death may
6 proceed. If both consulting physicians certify that the
individual has an incurable and irreversible condition, the
8 individual's attending physician, any other physician and any
health care facility are authorized to assist the individual with
10 a medically assisted death.