

# MAINE STATE LEGISLATURE

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L.D. 748

DATE: 6/8/95

(Filing No. H- 412 )

REPORT "C"  
JUDICIARY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
117TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 552, L.D. 748, Bill, "An Act to Allow Physician Assisted Deaths with Dignity for Terminally Ill Persons in Maine"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 18-A MRSA art. V, Part 9 is enacted to read:

PART 9

DEATH WITH DIGNITY ACT

§5-901. Short title

This Part may be known and cited as the "Death with Dignity Act."

§5-902. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Adult" means a person who is 18 years of age or older.

(b) "Attending physician" means a physician who has primary responsibility for the care of a patient and treatment of the patient's terminal disease.

(c) "Capable" means not incapable.

(d) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional

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COMMITTEE AMENDMENT "B" to H.P. 552, L.D. 748

2 diagnosis and prognosis regarding the patient's disease. The  
3 consulting physician may not be a partner or similar business  
4 associate of the attending physician and may not have an office  
5 in the same building as the attending physician.

6 (e) "Counseling" means a consultation between a counselor  
7 and a patient for the purpose of determining whether the patient  
8 is suffering from a psychiatric or psychological disorder or  
9 depression causing impaired judgment.

10 (f) "Counselor" means a psychiatrist licensed under Title  
11 32, chapter 48, a psychologist licensed under Title 32, chapter  
12 56 or a social worker licensed under Title 32, chapter 83.

13 (g) "Health care provider" means a person licensed,  
14 certified or otherwise authorized or permitted by the laws of  
15 this State to administer health care in the ordinary course of  
16 business or practice of a profession and includes a health care  
17 facility.

18 (h) "Incapable" means that, in the opinion of a court or in  
19 the opinion of the patient's attending physician or consulting  
20 physician, a patient lacks the ability to make and communicate  
21 health care decisions to health care providers.

22 (i) "Informed decision" means a decision that is made by a  
23 qualified patient to request and obtain a prescription to end  
24 that patient's life in a humane and dignified manner and that is  
25 based on the patient's appreciation of the relevant facts after  
26 being fully informed by the attending physician of:

27 (1) The patient's medical diagnosis;

28 (2) The patient's prognosis;

29 (3) The potential risks associated with taking the  
30 medication that is prescribed;

31 (4) The probable results of taking the prescribed  
32 medication; and

33 (5) The feasible alternatives, including, but not limited  
34 to, comfort care, hospice care and pain control.

35 (j) "Medically confirmed" means that the medical opinion of  
36 the attending physician is confirmed by a consulting physician  
37 who has examined the patient and the patient's relevant medical  
38 records.

2       (k) "Patient" means a person who is under the care of a  
3       physician.

4       (l) "Personally communicated request" means a request that  
5       the patient makes directly in a face-to-face meeting with the  
6       attending physician. A "personally communicated request" may be  
7       made orally, by sign language or by some other method of  
8       communication, including a method using an interpreter, that  
9       clearly and unambiguously communicates the patient's intentions.

10       (m) "Physician" means a doctor of medicine or osteopathy  
11       licensed to practice medicine by the Board of Registration in  
12       Medicine or the Board of Osteopathic Licensure.

13       (n) "Qualified patient" means a capable adult who is a  
14       resident of this State and who has satisfied the requirements of  
15       this Act in order to obtain a prescription for medication to end  
16       that person's life in a humane and dignified manner.

17       (o) "Terminal disease" means an incurable and irreversible  
18       disease that has been medically confirmed and will, within  
19       reasonable medical judgment, produce death within 6 months.

20       **§5-903. Written request for medication**

21       (a) An adult who is capable, is a resident of this State  
22       and is determined by the attending physician and consulting  
23       physician to be suffering from a terminal disease and who has  
24       voluntarily expressed the wish to die may make a written request  
25       for medication for the purpose of ending that adult's life in an  
26       humane and dignified manner in accordance with this Act.

27       (b) A valid request for medication under this Act must be  
28       in the form described in section 5-920, signed and dated by the  
29       patient and witnessed by at least 2 individuals who, in the  
30       presence of the patient, attest that to the best of their  
31       knowledge and belief the patient is capable, is acting  
32       voluntarily and is not coerced to sign the request.

33       (1) A witness may not be a person who is:

34       (i) A relative of the patient by blood, marriage or  
35       adoption;

36       (ii) At the time the request is signed, entitled to  
37       any portion of the estate of the qualified patient upon  
38       that patient's death under a will or by operation of  
39       law; or

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- 2           (iii) An owner, operator or employee of a health care  
3           facility where the qualified patient is receiving  
4           medical treatment or is a resident.
- 6           (2) The patient's attending physician at the time the  
7           request is signed may not be a witness.
- 8           (3) If the patient is a resident in a long-term care  
9           facility at the time the written request is made, one of the  
10           witnesses must be an individual designated by the facility  
11           and have the qualifications specified by the Department of  
12           Human Services by rule.
- 14           (4) If the patient is incapable of making a written  
15           request, the attending physician shall enter that fact in  
16           the patient's medical record. The patient may then comply  
17           with the requirement of a written request by making a  
18           separate personally communicated request:
- 20                 (1) To the attending physician;
- 22                 (2) Before 2 witnesses qualified to witness a written  
23                 request; and
- 24                 (3) That is recorded verbatim and transcribed into  
25                 written form and entered in the patient's medical  
26                 record.
- 28           **§5-904. Attending physician's responsibilities**
- 30                 The attending physician shall:
- 32                         (a) Make the initial determination of whether a patient has  
33                         a terminal disease, is capable and has voluntarily requested the  
34                         medication under this Act;
- 36                         (b) In consultation with the consulting physician,  
37                         determine the appropriate medication that the attending physician  
38                         will prescribe to carry out the patient's request;
- 40                         (c) Inform the patient of:
- 42                                 (1) The patient's medical diagnosis;
- 44                                 (2) The patient's prognosis;
- 46                                 (3) The potential risks associated with taking the  
47                                 medication prescribed;
- 48                                 (4) The probable result of taking the medication  
49                                 prescribed; and

2           (5) The feasible alternatives, including, but not limited  
3           to, comfort care, hospice care and pain control;

4  
5           (d) Refer the patient to a consulting physician for medical  
6           confirmation of the diagnosis and for a determination that the  
7           patient is capable and acting voluntarily;

8  
9           (e) Refer the patient for counseling pursuant to section  
10           5-906;

11           (f) Request that the patient notify next of kin. If  
12           requested by the patient, the physician shall provide assistance  
13           in arranging notification of or contact with the patient's next  
14           of kin;

15  
16           (g) Inform the patient of the opportunity to revoke the  
17           request at any time and in any manner and offer the patient an  
18           opportunity to revoke at the end of the 15-day waiting period  
19           pursuant to section 5-909;

20  
21           (h) Verify, immediately prior to writing the prescription  
22           for medication under this Act, that the patient is making an  
23           informed decision;

24  
25           (i) Fulfill the medical record documentation requirements  
26           of section 5-912;

27  
28           (j) Ensure that all appropriate steps are carried out in  
29           accordance with this Act prior to writing a prescription of  
30           medication to enable a qualified patient to end that patient's  
31           life in a humane and dignified manner; and

32  
33           (k) Be present when the medication that will end the  
34           patient's life is administered.

35  
36  
37           **§5-905. Consulting physician confirmation**

38  
39           A patient is qualified under this Act if a consulting  
40           physician examines the patient and the patient's relevant medical  
41           records and confirms, in writing, the attending physician's  
42           diagnosis that the patient is suffering from a terminal disease  
43           and verifies that the patient is capable, is acting voluntarily  
44           and has made an informed decision. The consulting physician  
45           shall inquire whether the patient wishes to notify next of kin if  
46           the patient has not already done so. If requested by the  
47           patient, the physician shall provide assistance in arranging  
48           notification of or contact with the patient's next of kin.  
49  
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**§5-906. Counseling referral**

2

4 The attending physician and the consulting physician shall  
6 refer the patient for counseling. Medication to end a patient's  
8 life in a humane and dignified manner may not be prescribed until  
the counselor determines that the patient is not suffering from a  
psychiatric or psychological disorder or depression that causes  
impaired judgment.

10 The counselor shall inquire whether the patient wishes to  
12 notify next of kin if the patient has not already done so. If  
14 requested by the patient, the counselor shall provide assistance  
in arranging notification of or contact with the patient's next  
of kin.

16 **§5-907. Informed decision**

18 A person may not receive a prescription for medication to  
20 end that person's life in a humane and dignified manner unless  
22 that person has made an informed decision as defined in section  
5-902, subsection (i). Before prescribing medication under this  
Act, the attending physician shall verify that the patient is  
making an informed decision.

24

**§5-908. Family notification**

26

28 The attending physician shall ask the patient to notify the  
30 next of kin of the patient's request for medication pursuant to  
this Act. If requested by the patient, the physician shall  
32 provide assistance in arranging notification of or contact with  
the patient's next of kin. A patient who declines or is unable  
to notify the next of kin is not denied the request for  
medication for that reason.

34

**§5-909. Requests**

36

38 To receive a prescription for medication to end the  
40 patient's life in a humane and dignified manner, a qualified  
patient must personally communicate a request and repeat the  
42 personally communicated request to the attending physician no  
sooner than 15 days after the initial request. Before the 2nd  
44 personally communicated request is made, the patient must make  
the request in writing as described in section 5-903. When the  
46 qualified patient makes the 2nd personally communicated request,  
the attending physician shall offer the patient an opportunity to  
revoke the request.

48 **§5-910. Right to revoke request**

50 A patient may revoke a request for medication under this Act  
at any time and in any manner without regard to the patient's

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2 mental state. A prescription for medication under this Act may  
3 not be written without the attending physician offering the  
4 qualified patient an opportunity to revoke the request.

6 **§5-911. Waiting period**

8 No fewer than 15 days may elapse between the patient's  
9 initial personally communicated request and the writing of a  
10 prescription under this Act. No fewer than 48 hours may elapse  
11 between the patient's written request and the writing of a  
12 prescription under this Act.

14 **§5-912. Medical record filing requirements**

16 The following information must be filed in the patient's  
17 medical record:

18 (a) All personally communicated requests by a patient for  
19 medication to end the patient's life in a humane and dignified  
20 manner;

22 (b) All written requests by a patient for medication to end  
23 the patient's life in a humane and dignified manner;

24 (c) The attending physician's diagnosis and prognosis,  
25 determining that the patient is capable, is acting voluntarily  
26 and is making an informed decision;

28 (d) The consulting physician's diagnosis and prognosis,  
29 determining that the patient is capable, is acting voluntarily  
30 and is making an informed decision;

32 (e) A report of the determinations made during counseling;

34 (f) The attending physician's offer to the patient to  
35 revoke the request at the time of the patient's 2nd personally  
36 communicated request pursuant to section 5-909; and

38 (g) A note by the attending physician stating that  
39 requirements under this Act are met and indicating the steps  
40 taken to carry out the request, including the medication  
41 prescribed.

44 **§5-913. Residency requirement**

46 Only persons who have been residents of this State for at  
47 least 6 months immediately preceding the request may make and be  
48 granted requests under this Act.



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**§5-914. Reporting requirements**

2 (a) The Bureau of Health shall annually review records  
4 maintained pursuant to this Act.

6 (b) The Bureau of Health shall adopt rules to facilitate  
8 the collection of information in compliance with this Act. The  
10 information is not a public record and is not available to the  
12 public.

14 (c) The Bureau of Health shall make available to the public  
16 an annual statistical report of information collected under  
18 subsection (b).

**§5-915. Effect on construction of wills, contracts and laws**

20 (a) A provision in a contract, will or other agreement,  
22 whether written or oral, to the extent the provision affects the  
24 decision of a person to make or revoke a request for medication  
26 to end the person's life in a humane and dignified manner, is not  
28 valid.

30 (b) An obligation owing under any existing contract is not  
32 conditional to or affected by the making or revoking of a request  
34 for medication under this Act to end the person's life in a  
36 humane and dignified manner.

**§5-916. Insurance or annuity policies**

38 Benefits payable under a life, health or accident insurance  
40 or annuity policy are not affected by making or revoking a  
42 request under this Act for medication to end the patient's life  
44 in a humane and dignified manner. A qualified patient's act of  
46 ingesting medication to end that patient's life in a humane and  
48 dignified manner may not have an effect upon benefits payable  
50 under a life, health or accident insurance or annuity policy.

**§5-917. Construction**

(a) This Act may 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. Actions taken in accordance  
with this Act do not, for any purpose, constitute suicide,  
assisted suicide, mercy killing or homicide.

(b) This Act may not be construed to authorize any person  
to assist in the administration of medication prescribed under  
the provisions of this Act unless that person is designated by  
the qualified patient to administer or dispense the medication  
because of the qualified patient's physical disability.

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2 **§5-918. Immunities**

4 Except as provided in section 5-919, the following  
6 immunities apply.

8 (a) A person is not subject to civil or criminal liability  
10 or professional disciplinary action for participating in good  
12 faith in any act under this Act, including being present when a  
14 qualified patient takes the prescribed medication to end the  
16 qualified patient's life in a humane and dignified manner.

18 (b) A professional organization or association or health  
20 care provider may not subject a person to censure, discipline,  
22 suspension, loss of license, loss of privileges, loss of  
24 membership or other penalty for participating or refusing to  
26 participate in good faith in any act under this Act.

28 (c) A request by a patient for medication or provision by  
30 an attending physician of medication in accord with the  
32 provisions of this Act does not provide the sole basis for the  
34 appointment of a guardian or conservator. The provision of  
36 medication to a qualified patient does not constitute neglect on  
38 the part of an attending physician.

40 (d) A health care provider is not under a duty, whether by  
42 contract, by law or by any other legal requirement to provide  
44 medication to end the patient's life in a humane and dignified  
46 manner. If a health care provider is unable or unwilling to  
48 carry out a patient's request under this Act and the patient  
50 transfers that patient's care to a new health care provider, the  
52 prior health care provider shall transfer, upon request, a copy  
54 of the patient's relevant medical records to the new health care  
56 provider.

58 (e) A pharmacist is not under a duty, whether by contract,  
60 by law or by any other legal requirement to fill a prescription  
62 written in accordance with this Act that the pharmacist knows or  
64 has reason to know is intended to be ingested by a qualified  
66 patient to end that patient's life in a humane and dignified  
68 manner. If a pharmacist is unable or unwilling to fill a  
70 prescription under this Act, the pharmacist shall make that  
72 inability or refusal known to the patient, who may then seek  
74 another pharmacist to fill the prescription.

76 **§5-919. Liabilities**

78 (a) A person who, without authorization of the patient,  
80 willfully alters or forges a request for medication or conceals

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2 or destroys a revocation of that request with the intent or  
effect of causing the patient's death commits a Class A crime.

4 (b) A person who coerces or exerts undue influence on a  
patient to request medication for the purpose of ending the  
6 patient's life or to destroy a revocation of such a request  
commits a Class A crime.

8 (c) This Act does not limit further liability for civil  
10 damages resulting from other negligent conduct or intentional  
misconduct by any person.

12 (d) The penalties in this Act do not preclude criminal  
14 penalties applicable under other law for conduct that is  
inconsistent with the provisions of this Act.

16 **§5-920. Form of request**

18 A request for medication as authorized by this Act must be  
20 in substantially the following form.

22 **REQUEST FOR MEDICATION**  
24 **TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER**

26 I....., am an adult of sound mind.

28 I am suffering from....., which my  
attending physician has determined is a terminal disease and  
30 which has been medically confirmed by a consulting physician.

32 I have been fully informed of my diagnosis, prognosis, the  
nature of medication to be prescribed and potential associated  
34 risks, the expected result and the feasible alternatives,  
including comfort care, hospice care and pain control.

36 I request that my attending physician prescribe medication  
38 that will end my life in a humane and dignified manner.

40 **INITIAL ONE:**

42 ... I have informed my family of my decision and taken  
their opinions into consideration.

44 ... I have decided not to inform my family of my decision.

46 ... I have no family to inform of my decision.

48 I understand that I have the right to revoke this request at  
50 any time. I understand the full importance of this request and I  
expect to die when I take the medication to be prescribed.

P.O.S.

2 I make this request voluntarily and without reservation and  
4 I accept full moral responsibility for my actions.

6 Signed:.....

8 Dated:.....

10 **DECLARATION OF WITNESSES**

12 We declare that the person signing this request:

14 (A) Is personally known to us or has provided proof of  
identity;

16 (B) Signed this request in our presence;

18 (C) Appears to be of sound mind and not under duress, fraud  
or undue influence; and

20 (D) Is not a patient for whom either of us is the attending  
22 physician.

24 .....Witness 1/Date

26 .....Witness 2/Date

28 Note: Neither witness may be a relative by blood, marriage or  
30 adoption of the person signing this request, may be entitled to  
32 any portion of the person's estate upon death or may own, operate  
34 or be employed at a health care facility where the person is a  
patient or resident. If the patient is an inpatient at a health  
care facility, one of the witnesses must be an individual  
designated by the facility.'

36 Further amend the bill by inserting at the end before the  
38 statement of fact the following:

40 **FISCAL NOTE**

42 This bill may increase prosecutions for Class A crimes.  
44 Sentences of more than 12 months imposed for Class A crimes must  
46 be served in a state correctional institution. The cost to the  
48 State per sentence is \$169,852 based upon an average length of  
stay of 6 years and one month. The State also must reimburse  
counties for sentences served in county jails of 12 months or  
less for Class A crimes.

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2 The Judicial Department may require additional General Fund  
3 appropriations to cover indigent defense costs related to these  
4 new cases. The amounts can not be estimated at this time. The  
5 additional workload and administrative costs associated with the  
6 minimal number of new cases filed in the court system can be  
7 absorbed within the budgeted resources of the Judicial  
8 Department. The collection of additional fines may also increase  
9 General Fund revenue by minor amounts.

10 The additional costs associated with the annual review of  
11 records and the preparation of a statistical report can be  
12 absorbed by the Department of Human Services utilizing existing  
13 budgeted resources.'

14

16

### STATEMENT OF FACT

18

19 This amendment makes several changes to the original bill.  
20 The purpose is still to allow a mentally competent adult who is  
21 suffering from a terminal illness to request and obtain  
22 medication from a physician to end that patient's own life in a  
23 humane and dignified manner. This amendment adds additional  
24 safeguards to ensure that the patient's request is voluntary and  
25 based on an informed decision.

26

27 Under this amendment a consulting physician may not be in  
28 business with the attending physician or have an office in the  
29 same building as the attending physician.

30

31 It defines a counselor as a licensed psychiatrist,  
32 psychologist or social worker.

32

33 It deletes from the definition of "incapable" a phrase  
34 addressing how a person can communicate. The issue of  
35 communication is addressed in a different section.

36

37 It creates a new term and defines it. "Personally  
38 communicated request" means a request that the patient makes  
39 directly in a face-to-face meeting with the attending physician.  
40 A personally communicated request can be made orally, by sign  
41 language or by some other method of communication, including a  
42 method using an interpreter, that clearly and unambiguously  
43 communicates the patient's intentions.

44

45 It adds a reference to the licensing board of osteopathic  
46 physicians.

48

49 It provides for the circumstance in which a patient can make  
50 and communicate health care decisions but is incapable of  
writing. A personally communicated request reciting the

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information required to be contained in a written request made before the required witnesses and recorded and transcribed may be considered a written request and made a part of the patient's medical record.

It specifies that the attending physician, in consultation with the consulting physician, is the one who makes the decision as to what medication should be prescribed for the patient to carry out the patient's request. It also requires the attending physician to be present when the medication that will end the patient's life is administered. It does not require that physician to administer the medication or be present when the patient dies.

The bill requires the attending physician to request that the patient notify next of kin. This amendment requires the consulting physician and the counselor to inquire about notifying the next of kin. This amendment also requires the attending or consulting physician or the counselor to help, at the patient's request, notify or contact next of kin.

The amendment requires every patient to be referred to a counselor to determine whether the patient is suffering from a psychiatric or psychological disorder or depression that impairs judgment.

The amendment revises the provision addressing sequential requests required to confirm the patient's intent. It refers to "personally communicated requests" rather than oral requests to cover situations in which the patient's speech is not very intelligible and the patient can communicate in other ways. This amendment retains the requirement that at least 15 days must have elapsed since the first request before the 2nd request may be made. A written request must be made before the 2nd personally communicated request, and the written request must be made at least 48 hours before the prescription for the medication may be written.

The amendment revises the provisions regarding insurance and annuity policies to prohibit a change in benefits payable under the policies based on the patient's making or revoking a request to end that patient's life in a humane and dignified manner. Under this amendment, an underwriter, when writing the policy or annuity, may take into consideration the fact that someone who is terminally ill has requested to die. Once written, however, the benefits may not be affected.

This amendment prohibits anyone other than the patient from administering the medication unless the patient designates another person to do so because the patient is physically unable to do so.

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2           This amendment also provides an opportunity for a pharmacist  
4           who conscientiously objects to filling a prescription that will  
            end a patient's life to refuse to fill the prescription.

6           The amendment also makes technical corrections and adds a  
8           fiscal note to the bill.