

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 916

H.P. 663

House of Representatives, February 6, 1997

An Act to Allow Physician-assisted Deaths for the Terminally Ill.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BROOKS of Winterport.
Cosponsored by Senator MITCHELL of Penobscot and
Representatives: BARTH of Bethel, COWGER of Hallowell, FARNSWORTH of Portland,
JONES of Bar Harbor, LINDAHL of Northport, MARVIN of Cape Elizabeth, Senators:
LONGLEY of Waldo, MILLS of Somerset.

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

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

6 **PART 9**

8 **DEATH WITH DIGNITY ACT**

10 **§5-901. Short title**

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

14 **§5-902. Definitions**

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

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

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

24 (c) "Capable" means not incapable.

26 (d) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease. The consulting physician may not be a partner or similar business associate of the attending physician and may not have an office in the same building as the attending physician.

30 (e) "Counseling" means a consultation between a counselor and a patient for the purpose of determining whether the patient is suffering from a psychiatric or psychological disorder or depression that causes impaired judgment.

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

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

42 (h) "Incapable" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting

2 physician, a patient lacks the ability to make and communicate
3 health care decisions to health care providers.

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

10 (1) The patient's medical diagnosis;

12 (2) The patient's prognosis;

14 (3) The potential risks associated with taking the
15 medication that is prescribed;

16 (4) The probable results of taking the prescribed
17 medication; and

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

22 (j) "Medically confirmed" means that the medical opinion of
23 the attending physician is confirmed by a consulting physician
24 who has examined the patient and the patient's relevant medical
25 records.

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

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

38 (m) "Physician" means a doctor of medicine or osteopathy
39 licensed to practice medicine by the Board of Licensure in
40 Medicine or the Board of Osteopathic Licensure.

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

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

50

§5-903. Written request for medication

2
3
4 (a) An adult who is capable, is a resident of this State
5 and is determined by the attending physician and the consulting
6 physician to be suffering from a terminal disease and who has
7 voluntarily expressed the wish to die may make a written request
8 for medication for the purpose of ending that adult's life in a
9 humane and dignified manner in accordance with this Act.

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

16
17 (1) A witness may not be a person who is:

18
19 (i) A relative of the patient by blood, marriage or
20 adoption;

21
22 (ii) At the time the request is signed, entitled to
23 any portion of the estate of the qualified patient upon
24 that patient's death, under a will or by operation of
25 law; or

26
27 (iii) An owner, operator or employee of a health care
28 facility where the qualified patient is receiving
29 medical treatment or is a resident.

30
31 (2) The patient's attending physician at the time the
32 request is signed may not be a witness.

33
34 (3) If the patient is a resident in a long-term care
35 facility at the time the written request is made, one of the
36 witnesses must be an individual designated by the facility
37 and have the qualifications specified by the Department of
38 Human Services by a routine technical rule, as defined in
39 the Maine Administrative Procedure Act, Title 5, chapter
40 375, subchapter II-A.

41
42 (4) If the patient is incapable of making a written
43 request, the attending physician shall enter that fact in
44 the patient's medical record. The patient may then comply
45 with the requirement of a written request by making a
46 separate personally communicated request:

47
48 (i) To the attending physician;

2 (ii) Before 2 witnesses qualified to witness a written
 request; and

4 (iii) That is recorded verbatim and transcribed into
6 written form and entered in the patient's medical
 record.

8 **§5-904. Attending physician's responsibilities**

10 The attending physician shall:

12 (a) Make the initial determination of whether a patient has
14 a terminal disease, is capable and has voluntarily requested the
 medication under this Act;

16 (b) In consultation with the consulting physician,
18 determine the appropriate medication that the attending physician
 will prescribe to carry out the patient's request;

20 (c) Inform the patient of:

22 (1) The patient's medical diagnosis;

24 (2) The patient's prognosis;

26 (3) The potential risks associated with taking the
 medication prescribed;

28 (4) The probable result of taking the medication
30 prescribed; and

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

34 (d) Refer the patient to a consulting physician for medical
36 confirmation of the diagnosis and for a determination that the
 patient is capable and acting voluntarily;

38 (e) Refer the patient for counseling pursuant to section
40 5-906;

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

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

2 (h) Verify, immediately before writing the prescription for
3 medication under this Act, that the patient is making an informed
4 decision;

6 (i) Fulfill the medical record documentation requirements
7 of section 5-912;

8 (j) Ensure that all appropriate steps are carried out in
9 accordance with this Act before writing a prescription for
10 medication to enable a qualified patient to end that patient's
11 life in a humane and dignified manner; and

12 (k) Be present when the medication that will end the
13 patient's life is administered.

14 **§5-905. Consulting physician confirmation**

15 A patient is qualified under this Act if a consulting
16 physician examines the patient and the patient's relevant medical
17 records and confirms, in writing, the attending physician's
18 diagnosis that the patient is suffering from a terminal disease
19 and verifies that the patient is capable, is acting voluntarily
20 and has made an informed decision. The consulting physician
21 shall inquire whether the patient wishes to notify next of kin if
22 the patient has not already done so. If requested by the
23 patient, the consulting physician shall provide assistance in
24 arranging notification of or contact with the patient's next of
25 kin.

26 **§5-906. Counseling referral**

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

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

38 **§5-907. Informed decision**

39 A person may not receive a prescription for medication to
40 end that person's life in a humane and dignified manner unless
41 that person has made an informed decision as defined in section
42 5-901.

2 5-902, subsection (i). Before prescribing medication under this
3 Act, the attending physician shall verify that the patient is
4 making an informed decision.

6 **§5-908. Family notification**

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

16 **§5-909. Requests**

18 To receive a prescription for medication to end the
19 patient's life in a humane and dignified manner, a qualified
20 patient must personally communicate a request and repeat the
21 personally communicated request to the attending physician no
22 sooner than 15 days after the initial request. Before the 2nd
23 personally communicated request is made, the patient must make
24 the request in writing as described in section 5-903. When the
25 qualified patient makes the 2nd personally communicated request,
26 the attending physician shall offer the patient an opportunity to
27 revoke the request.

28 **§5-910. Right to revoke request**

30 A patient may revoke a request for medication under this Act
31 at any time and in any manner without regard to the patient's
32 mental state. A prescription for medication under this Act may
33 not be written without the attending physician offering the
34 qualified patient an opportunity to revoke the request.

36 **§5-911. Waiting period**

38 No fewer than 15 days may elapse between the patient's
39 initial personally communicated request and the writing of a
40 prescription under this Act. No fewer than 48 hours may elapse
41 between the patient's written request and the writing of a
42 prescription under this Act.

44 **§5-912. Medical record filing requirements**

46 The following information must be filed in the patient's
47 medical record:

2 (a) All personally communicated requests by a patient for
3 medication to end the patient's life in a humane and dignified
4 manner;

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

8 (c) The attending physician's diagnosis and prognosis and
9 that physician's determination that the patient is capable, is
10 acting voluntarily and is making an informed decision;

12 (d) The consulting physician's diagnosis and prognosis and
13 that physician's determination that the patient is capable, is
14 acting voluntarily and is making an informed decision;

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

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

22 (g) A note by the attending physician stating that
23 requirements under this Act are met and indicating the steps
24 taken to carry out the request, including the medication
25 prescribed.

26 **§5-913. Residency requirement**

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

32 **§5-914. Reporting requirements**

34 (a) The Department of Human Services, Bureau of Health
35 shall annually review records maintained pursuant to this Act.

38 (b) The Department of Human Services, Bureau of Health
39 shall adopt rules to facilitate the collection of information in
40 compliance with this Act. The information is not a public record
41 and is not available to the public.

42 (c) The Department of Human Services, Bureau of Health
43 shall make available to the public an annual statistical report
44 of information collected under subsection (b).

46 **§5-915. Effect on construction of wills, contracts and laws**

48 (a) A provision in a contract, will or other agreement,
49 whether written or oral, to the extent the provision affects the
50 rights of the parties to the contract, will or other agreement,

2 decision of a person to make or revoke a request for medication
3 to end the person's life in a humane and dignified manner, is not
4 valid.

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

10 **§5-916. Insurance or annuity policies**

11 Benefits payable under a life, health or accident insurance
12 or annuity policy are not affected by making or revoking a
13 request under this Act for medication to end the patient's life
14 in a humane and dignified manner. A qualified patient's act of
15 ingesting medication to end that patient's life in a humane and
16 dignified manner may not have an effect upon benefits payable
17 under a life, health or accident insurance or annuity policy.

20 **§5-917. Construction**

21 (a) This Act may not be construed to authorize a physician
22 or any other person to end a patient's life by lethal injection,
23 mercy killing or active euthanasia. Actions taken in accordance
24 with this Act do not, for any purpose, constitute suicide,
25 assisted suicide, mercy killing or homicide.

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

34 **§5-918. Immunities**

35 Except as provided in section 5-919, the following
36 immunities apply.

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

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

2 (c) A request by a patient for medication or provision by
3 an attending physician of medication in accord with the
4 provisions of this Act does not provide the sole basis for the
5 appointment of a guardian or conservator. The provision of
6 medication to a qualified patient does not constitute neglect on
7 the part of an attending physician.

8 (d) A health care provider is not under a duty, whether by
9 contract, by law or by any other legal requirement, to provide
10 medication to end the patient's life in a humane and dignified
11 manner. If a health care provider is unable or unwilling to
12 carry out a patient's request under this Act and the patient
13 transfers that patient's care to a new health care provider, the
14 prior health care provider shall transfer, upon request, a copy
15 of the patient's relevant medical records to the new health care
16 provider.

17 (e) A pharmacist is not under a duty, whether by contract,
18 by law or by any other legal requirement, to fill a prescription
19 written in accordance with this Act that the pharmacist knows or
20 has reason to know is intended to be ingested by a qualified
21 patient to end that patient's life in a humane and dignified
22 manner. If a pharmacist is unable or unwilling to fill a
23 prescription under this Act, the pharmacist shall make that
24 inability or refusal known to the patient, who may then seek
25 another pharmacist to fill the prescription.

26 **§5-919. Liabilities**

27 (a) A person who, without authorization of the patient,
28 willfully alters or forges a request for medication or conceals
29 or destroys a revocation of that request with the intent or
30 effect of causing the patient's death commits a Class A crime.

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

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

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

41 **§5-920. Form of request**

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

4 **REQUEST FOR MEDICATION**
6 **TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER**

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

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

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

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

28 **INITIAL ONE:**

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

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

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

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

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

48 Signed:.....

Dated:.....

DECLARATION OF WITNESSES

We declare that the person signing this request:

44 (A) Is personally known to us or has provided proof of
46 identity:

48 (B) Signed this request in our presence:

2 (C) Appears to be of sound mind and not under duress,
3 fraudulent or undue influence; and

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

6
7 Witness 1/Date

8
9 Witness 2/Date

10
11 Note: Neither witness may be a relative by blood, marriage or
12 adoption of the person signing this request, may be entitled to
13 any portion of the person's estate upon death or may own, operate
14 or be employed at a health care facility where the person is a
15 patient or resident. If the patient is an inpatient at a health
16 care facility, one of the witnesses must be an individual
17 designated by the facility.

18
19
20 **SUMMARY**

21 This bill creates the Death with Dignity Act. It allows a
22 mentally competent adult who is suffering from a terminal illness
23 to request and obtain medication from a physician to end that
24 patient's own life in a humane and dignified manner, with
25 safeguards to ensure that the patient's request is voluntary and
26 based on an informed decision.
27
28