

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 347

S.P. 113

In Senate, February 2, 2017

### An Act To Support Death with Dignity

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator KATZ of Kennebec.

Cosponsored by Representative HUBBELL of Bar Harbor, Representative WOOD of Greene  
and

Senators: CARSON of Cumberland, GRATWICK of Penobscot, HILL of York, MIRAMANT  
of Knox, ROSEN of Hancock, Representatives: HARLOW of Portland, HYMANSON of  
York, JORGENSEN of Portland.

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

2 **Sec. 1. 24 MRSA §2908** is enacted to read:

3 **§2908. Patient-directed care at the end of life**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6 A. "Bona fide physician-patient relationship" means a treating or consulting  
7 relationship in the course of which a physician has completed a full assessment of a  
8 patient's medical history and current medical condition, including a personal physical  
9 examination.

10 B. "Capable" means that a patient has the ability to make and communicate health  
11 care decisions to a physician, including communication through persons familiar with  
12 the patient's manner of communicating if those persons are available.

13 C. "Health care facility" means a hospital, psychiatric hospital or nursing facility  
14 licensed under Title 22, chapter 405 or a residential care facility licensed under Title  
15 22, chapter 1663.

16 D. "Health care provider" means a person licensed by this State to provide health  
17 care or administer health care or dispense medication, a partnership or corporation  
18 made up of such persons or an officer, employee or agent of such a person acting in  
19 the course and scope of employment, agency or contract. "Health care provider"  
20 includes a physician.

21 E. "Impaired judgment" means the inability of a person to sufficiently understand or  
22 appreciate the relevant facts necessary to make an informed decision.

23 F. "Interested person" means a patient's physician; a person who is a relative of a  
24 patient by blood, marriage or adoption; a person who knows that the person would be  
25 entitled upon a patient's death to any portion of the estate or assets of the patient  
26 under any will or trust, by operation of law or by contract; or an owner, operator or  
27 employee of a health care facility where a patient is receiving medical treatment or is  
28 a resident.

29 G. "Palliative care" means care that eases or relieves pain or discomfort.

30 H. "Patient" means an adult who is a resident of this State and who is terminally ill  
31 and has a limited life expectancy in the opinion of the adult's physician.

32 I. "Physician" means an individual licensed to practice medicine under Title 32,  
33 chapter 36 or 48.

34 J. "Terminal condition" means an incurable and irreversible disease that will, within  
35 reasonable medical judgment, result in death within 6 months.

36 **2. Right to information.** A patient has a right to information regarding all treatment  
37 options reasonably available for the care of the patient, including, but not limited to,  
38 information in response to specific questions about the foreseeable risks and benefits of

1 medication, without the physician's withholding requested information regardless of the  
2 purpose of the questions or the nature of the information.

3 **3. Patient-physician communication.** A physician who provides information to a  
4 patient under subsection 2 may not, because of providing that information, be considered  
5 to be assisting in or contributing to a patient's independent decision to self-administer a  
6 lethal dose of medication. An exchange of information between a patient and a physician  
7 under subsection 2 may not be used to establish civil or criminal liability or professional  
8 disciplinary action under Title 32, chapter 36 or 48.

9 **4. Requirements for prescription and documentation; immunity.** A physician  
10 who complies with the requirements of this section is not subject to any civil or criminal  
11 liability or professional disciplinary action if the physician in good faith prescribes to a  
12 patient with whom the physician has a bona fide physician-patient relationship  
13 medication that the patient subsequently self-administers for the purpose of hastening the  
14 patient's death. In order for a physician to prescribe the medication under this subsection,  
15 all of the actions set out in paragraphs A and B must be taken by the patient and the  
16 physician and documented as set out in this subsection.

17 A. The patient shall complete the following actions:

18 (1) Make an initial oral request to the physician while in the physician's physical  
19 presence for medication to be self-administered for the purpose of hastening the  
20 patient's death;

21 (2) At least 15 days after the initial request, make a 2nd request to the physician  
22 while in the physician's physical presence for medication to be self-administered  
23 for the purpose of hastening the patient's death, at which time the physician must  
24 offer the patient an opportunity to rescind the request;

25 (3) At least one day after the 2nd request, make a written request for medication  
26 to be self-administered for the purpose of hastening the patient's death. The  
27 request must be signed by the patient in the presence of 2 or more witnesses who  
28 are adults and are not interested persons and who must sign the document and  
29 affirm that the patient appears to understand the nature of the document and  
30 appears to be free from duress or undue influence at the time of signing the  
31 document; and

32 (4) If the physician plans to submit the prescription for medication to a  
33 pharmacist, sign a statement of written consent to the action and direct the  
34 pharmacist to deliver the medication to the patient or to a person whom the  
35 patient names to receive the medication from the pharmacist.

36 B. The physician shall complete the following actions:

37 (1) Determine, based on physical examination of the patient and review of the  
38 patient's medical records, that the patient meets the definition of "patient" as  
39 provided in subsection 1, paragraph H, is capable and is making a voluntary  
40 request and an informed decision;

41 (2) Include in the patient's medical record the following:

- 1                   (a) Documentation of the initial and 2nd oral requests made under paragraph  
2                   A, subparagraphs (1) and (2), including the wording of the requests;
- 3                   (b) A statement that the physician offered the patient an opportunity to  
4                   rescind the 2nd oral request made under paragraph A, subparagraph (2) and  
5                   the opportunity to rescind the written request at any time, including the  
6                   wording of the offers of opportunities to rescind;
- 7                   (c) A statement that the physician has informed the patient orally and in  
8                   writing of the following:
- 9                         (i) The patient's medical diagnosis;
- 10                        (ii) The patient's medical prognosis, including acknowledgment that the  
11                        physician's prediction of the patient's life expectancy is an estimate based  
12                        on the physician's best medical judgment and is not a guarantee of the  
13                        actual time remaining in the patient's life and that the patient could live  
14                        longer than the time predicted;
- 15                        (iii) The range of treatment options appropriate for the patient and the  
16                        patient's diagnosis;
- 17                        (iv) If the patient is not enrolled in hospice care, all feasible end-of-life  
18                        services, including palliative care, comfort care, hospice care and pain  
19                        control;
- 20                        (v) The range of possible results, including, but not limited to, potential  
21                        risks associated with taking the medication to be prescribed; and
- 22                        (vi) The probable result of taking the medication to be prescribed;
- 23                   (d) A statement that the physician referred the patient to a 2nd physician for  
24                   medical confirmation of the diagnosis and prognosis;
- 25                   (e) A statement that the patient meets the definition of "patient" as provided  
26                   in subsection 1, paragraph H, is capable and is making a voluntary request  
27                   and an informed decision;
- 28                   (f) A statement that the physician has determined that the patient does not  
29                   have impaired judgment or, in the alternative, that the physician has referred  
30                   the patient for an evaluation by a licensed psychiatrist, psychologist or  
31                   clinical social worker and that that person has determined that the patient is  
32                   capable and does not have impaired judgment;
- 33                   (g) A statement that the physician, after obtaining the consent of the patient,  
34                   consulted with the patient's primary care physician if the patient has a  
35                   primary care physician;
- 36                   (h) A statement that the requirements of divisions (a) to (g) were completed  
37                   immediately prior to writing the prescription and that the prescription was  
38                   written no earlier than 48 hours after the patient's written request under  
39                   paragraph A;

1                   (i) A statement that the physician is licensed to dispense medication or  
2                   submitted the prescription to a licensed pharmacist as directed by the patient  
3                   under paragraph A, subparagraph (4); and

4                   (j) A statement that the physician has fully complied with the requirements  
5                   of this subparagraph; and

6                   (3) Promptly notify the Department of Health and Human Services regarding  
7                   compliance with the requirements of this section, the patient's compliance with  
8                   paragraph A and the physician's compliance with this paragraph.

9                   **5. Construction.** This section may not be construed to limit civil or criminal  
10                  liability for gross negligence, recklessness or intentional misconduct of a person who acts  
11                  in accordance with this section.

12                  **6. No duty to aid or participate.** A patient who acts to self-administer a lethal dose  
13                  of medication in accordance with this section is not, as a result of taking those actions, a  
14                  dependent adult as defined in Title 22, section 3472, subsection 6, an incapacitated adult  
15                  as defined in Title 22, section 3472, subsection 10 or in need of protective services as  
16                  defined in Title 22, section 3472, subsection 12. A person who is present when a patient,  
17                  having followed the procedures required by this section, self-administers a lethal dose of  
18                  medication does not have a duty to aid the patient and is not subject to civil or criminal  
19                  liability solely for being present or solely for not acting to prevent the patient from self-  
20                  administering the medication. A person does not have a duty, by law or contract, to  
21                  participate in the provision of a lethal dose of medication to a patient.

22                  **7. Prohibition allowed.** With regard to a patient who is a resident or inpatient in a  
23                  health care facility, the facility may adopt a policy that prohibits a health care provider  
24                  from issuing a prescription to the patient for medication or providing medication that the  
25                  health care provider knows the patient intends to self-administer in a lethal dose while in  
26                  the health care facility. A health care facility that adopts a policy pursuant to this  
27                  subsection shall provide a copy of the policy to all health care providers employed in or  
28                  by the facility. A health care provider who violates a policy of a health care facility  
29                  prohibiting issuing a prescription or providing medication as authorized by this  
30                  subsection may be sanctioned by the health care facility for the violation of policy.

31                  **8. Protection from disciplinary and other actions.** A health care facility or health  
32                  care provider is not subject to disciplinary action, loss of professional privileges or loss of  
33                  professional licensing, certification or registration or other action or penalty for actions  
34                  taken in good faith reliance on the provisions of this section or for refusal to take action  
35                  that is authorized by this section. A physician who has a bona fide physician-patient  
36                  relationship with a patient may not be considered to have engaged in unprofessional  
37                  conduct for the purposes of professional licensure under Title 32, chapter 36 or 48 if the  
38                  physician participates in the provision of medication to a patient in accordance with this  
39                  section.

40                  **9. Insurance policy prohibitions.** A patient whose life is insured under a life  
41                  insurance policy issued under the provisions of Title 24-A, chapter 29 and the  
42                  beneficiaries of the policy may not be denied benefits on the basis of self-administration  
43                  of medication by the patient in accordance with this section. The sale, procurement or

1 issuance of any medical professional liability insurance policy issued under the  
2 provisions of Title 24-A and the rate charged by the insurer for the policy may not be  
3 conditioned upon or affected by the participation by the health care provider in the  
4 provision of medication to a patient in accordance with this section.

5 **10. Palliative care.** The participation of a health care provider in the provision of  
6 medication to a patient in accordance with this section may not limit or otherwise affect  
7 the provision, administration or receipt of palliative care to the patient consistent with  
8 accepted medical standards.

9 **11. Rulemaking for disposal of unused medications.** The Department of Health  
10 and Human Services shall adopt rules to provide for the safe disposal of medications  
11 prescribed under this section that are not used by the patient. Rules adopted under this  
12 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

13 **12. Statutory construction.** Nothing in this section may be construed to authorize a  
14 physician or any other person to end a patient's life by lethal injection, mercy killing or  
15 active euthanasia. Action taken in accordance with this section may not be construed for  
16 any purpose to constitute suicide, assisted suicide, mercy killing or homicide. This  
17 section may not be construed to conflict with Section 1553 of the federal Patient  
18 Protection and Affordable Care Act, Public Law No. 111-148, 124 Stat. 119 (2010), as  
19 amended by the federal Health Care and Education Reconciliation Act of 2010, Public  
20 Law No. 111-152, 124 Stat. 1029 (2010).

## 21 SUMMARY

22 This bill enacts a process for patient-directed care at the end of life for Maine  
23 residents who are adults who are terminally ill and who have been determined to have a  
24 limited life expectancy. The bill provides that such a patient has a right to information  
25 and includes requirements for patient and physician action and documentation in the  
26 patient's medical records of the steps taken. The bill authorizes a physician to prescribe a  
27 medication that the patient may self-administer for the purpose of hastening the patient's  
28 death. The bill provides protections for the physician, the patient's health care facility and  
29 health care providers. The bill protects the patient's life insurance and the health care  
30 providers' medical professional liability insurance. The bill protects the patient's right to  
31 palliative care. The bill requires rulemaking by the Department of Health and Human  
32 Services to provide for safe disposal of medications that are prescribed for end-of-life  
33 care and that are not used by the patient. The bill specifically states that nothing in the  
34 provisions of the bill may be construed to authorize a physician or other person to end a  
35 patient's life by lethal injection, mercy killing or active euthanasia. The bill specifically  
36 states that the provisions of the bill may not be construed to conflict with Section 1553 of  
37 the federal Patient Protection and Affordable Care Act, as amended by the federal Health  
38 Care and Education Reconciliation Act of 2010.