

Amendment to HB 304

1 Amend the title of the bill by replacing it with the following:

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3 AN ACT relative to death with dignity for certain persons suffering from a terminal
4 disease.
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6 Amend the bill by replacing section 1 with the following:

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8 1 New Chapter; Death With Dignity Act. Amend RSA by inserting after chapter 137-K the
9 following new chapter:

10

CHAPTER 137-L

11

DEATH WITH DIGNITY ACT

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137-L:1 Statement of Purpose. The state of New Hampshire recognizes that persons have a right, founded in the autonomy of the person, to control the decisions relating to the rendering of their own medical care. The state of New Hampshire further recognizes that medical care for terminally ill patients who are capable of making informed decisions during the time of their illness includes the right, with assistance from their physicians, to choose to die with dignity. Many terminally ill patients experience severe, unrelenting suffering, mental anguish over the prospect of losing control and independence, and/or embarrassing indignities for long periods while they are waiting to die from terminal illness. To remedy these situations the state of New Hampshire hereby declares that the laws of the state shall permit a licensed physician, upon written request of a terminally ill patient, to provide such patient with a prescription for lethal medication which will allow the patient, if the patient chooses to do so, to self-administer and thus control the time, place, and manner of death.

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137-L:2 Definitions. In this chapter:

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I. "Adult" means an individual who is 18 years of age or older.

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

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III. "Capable" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

1 IV. "Consulting physician" means a physician who is qualified by specialty or experience to
2 make a professional diagnosis and prognosis regarding the patient's disease.

3 V. "Counseling" means a consultation between a licensed psychiatrist or certified
4 psychologist and a patient for the purpose of determining whether the patient is suffering from a
5 psychiatric or psychological disorder or depression causing impaired judgment.

6 VI. "Division" means the division of public health services, department of health and human
7 services.

8 VII. "Health care provider" means a person licensed, certified, or otherwise authorized or
9 permitted by the law of this state to administer health care in the ordinary course of business or
10 practice of a profession, and includes a health care facility.

11 VIII. "Informed decision" means a decision by a qualified patient, to request and obtain a
12 prescription to end the patient's life in a humane and dignified manner, that is based on an
13 appreciation of the relevant facts and after being fully informed by the attending physician of the:

14 (a) Medical diagnosis.

15 (b) Prognosis.

16 (c) Potential risks associated with taking the medication to be prescribed.

17 (d) Probable result of taking the medication to be prescribed.

18 (e) Feasible alternatives, including, but not limited to, comfort care, hospice care,
19 palliative treatment, and pain control.

20 IX. "Medically confirmed" means the medical opinion of the attending physician has been
21 confirmed by a consulting physician who has examined the patient and the patient's relevant
22 medical records.

23 X. "Patient" means a person who is under the care of a physician.

24 XI. "Physician" means a person licensed by this state to practice medicine or osteopathy.

25 XII. "Qualified patient" means a capable adult who is a resident of New Hampshire or is a
26 patient regularly treated in a New Hampshire health care facility and who has satisfied the
27 requirements of this chapter in order to obtain a prescription for medication to end the patient's life
28 in a humane and dignified manner.

29 XIII. "Terminal disease" means an incurable and irreversible disease that has been
30 medically confirmed and will, within reasonable medical judgment, produce death within 6 months.

31 137-L:3 Initiating a Written Request for Medication.

32 I. An adult who is capable and a resident of New Hampshire, or who is a patient regularly
33 treated in a New Hampshire health care facility, and who has been determined by the attending
34 physician and consulting physician to be in a condition of severe, unrelenting suffering from a
35 terminal disease, and who has voluntarily expressed a wish to die, may make a written request for
36 medication for the purpose of ending such person's life in a humane and dignified manner in
37 accordance with this chapter.

1 II. No person shall be a qualified patient under the provisions of this chapter solely because
2 of age or disability.

3 III. No person or agency including a legal guardian or agent under a durable health care
4 power of attorney, shall make a request for medication pursuant to this chapter on behalf of a
5 patient who is not capable.

6 137-L:4 Form of the Written Request.

7 I. A valid request for medication under this chapter shall be in substantially the form
8 described in paragraph V of this section, signed and dated by the patient and witnessed by at least 2
9 individuals who, in the presence of the patient, attest that to the best of their knowledge and belief
10 the patient is capable, acting voluntarily, and is not being coerced to sign the request.

11 II. The witnesses signing the request executed under paragraph I shall not be:

12 (a) A relative of the patient by blood, marriage, or adoption;

13 (b) A person who at the time the request is signed would be entitled to any portion of the
14 estate of the qualified patient upon death under any will or by operation of law; or

15 (c) An owner, operator, or employee of a health care facility where the qualified patient
16 is receiving medical treatment or is a resident.

17 III. The patient's attending physician at the time the request is signed shall not be a
18 witness.

19 IV. REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED
20 MANNER

21 I, _____, am an adult of sound mind.

22 I am suffering from _____, which my attending physician has determined is a terminal
23 disease and which has been medically confirmed by a consulting physician. I have been fully
24 informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential
25 associated risks, the expected result, and the feasible alternatives, including comfort care, hospice
26 care and pain control.

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

29 INITIAL ONE:

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

31 _____ I have decided not to inform my family of my decision.

32 _____ I have no family to inform of my decision.

33 I understand that I have the right to rescind this request at any time.

34 I understand the full import of this request and I expect to die when I take the
35 medication to be prescribed. I further understand that although most deaths occur within three
36 hours, my death may take longer and my physician has counseled me about this possibility.



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

3 Signed: _____

4 Dated: _____

5 DECLARATION OF WITNESSES

6 We declare that the person signing this request:

- 7 (a) Is personally known to us or has provided proof of identity;
- 8 (b) Signed this request in our presence;
- 9 (c) Appears to be of sound mind and not under duress, fraud or undue influence;
- 10 (d) Is not a patient for whom either of us is attending physician.

11 _____

12 Witness 1/Date

13 _____

14 Witness 2/Date

15 NOTE: No witness shall be a relative (by blood, marriage or adoption) of the person signing this
16 request, entitled to any portion of the person's estate upon death, or own, operate or be employed at
17 a health care facility where the person is a patient or resident.

18 137-L:5 Attending Physician Responsibilities. The attending physician shall:

19 I. Make the initial determination of whether a patient has a terminal disease, is capable,
20 and has made the request voluntarily.

21 II. Inform the patient of the:

- 22 (a) Medical diagnosis.
- 23 (b) Prognosis.
- 24 (c) Potential risks associated with taking the medication to be prescribed.
- 25 (d) Probable result of taking the medication to be prescribed.
- 26 (e) Feasible alternatives, including, but not limited to, comfort care, hospice care,
27 palliative treatment, and pain control.

28 III. Refer the patient to a consulting physician for medical confirmation of the diagnosis, and
29 for a determination that the patient is capable and acting voluntarily.

30 IV. Refer the patient for counseling, if appropriate, pursuant to RSA 137-L:7.

31 V. Recommend that the patient notify next of kin.

32 VI. Counsel the patient about the importance of having another person present when the
33 patient takes the medication prescribed pursuant to this chapter and of not taking the medication in
34 a public place.

35 VII. Inform the patient that the patient has an opportunity to rescind the request at any
36 time and in any manner, and offer the patient an opportunity to rescind at the end of the 15-day
37 waiting period pursuant to RSA 137-L:9.

1 VIII. Verify, immediately prior to writing the prescription for medication under this chapter,
2 that the patient is making an informed decision.

3 IX. Fulfill the medical record documentation requirements of RSA 137-L:10.

4 X. Ensure that all appropriate steps are carried out in accordance with this chapter prior to
5 writing a prescription for medication to enable a qualified patient to end the patient's life in a
6 humane and dignified manner.

7 137-L:6 Consulting Physician Confirmation. Before a patient is qualified under the chapter, a
8 consulting physician shall examine the patient and the patient's relevant medical records and
9 confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal
10 disease and verify that the patient is capable, is acting voluntarily, and has made an informed
11 decision.

12 137-L:7 Counseling Referral. If in the opinion of the attending physician or the consulting
13 physician a patient may be suffering from a psychiatric or psychological disorder, or depression
14 causing impaired judgment, either physician shall refer the patient for counseling. No medication to
15 end a patient's life in a humane and dignified manner shall be prescribed until the person
16 performing the counseling determines that the patient is not suffering from a psychiatric or
17 psychological disorder, or depression causing impaired judgment.

18 137-L:8 Informed Decision; Family Notification.

19 I. No person shall receive a prescription for medication to end such person's life in a humane
20 and dignified manner unless such person has made an informed decision as defined in RSA 137-L:2,
21 VIII. Immediately prior to writing a prescription for medication under this chapter, the attending
22 physician shall verify that the patient is making an informed decision.

23 II. The attending physician shall recommend that the patient notify next of kin of the
24 patient's request for medication pursuant to this chapter. A patient who declines or is unable to
25 notify next of kin shall not have the patient's request denied for that reason.

26 137-L:9 Written and Oral Requests; Rescinding a Request; Waiting Periods.

27 I. In order to receive a prescription for medication to end a patient's life in a humane and
28 dignified manner, a qualified patient shall have made an oral request and a written request, and
29 reiterate the oral request to the patient's attending physician no fewer than 15 days after making
30 the initial oral request. At the time the qualified patient makes a second oral request, the attending
31 physician shall offer the patient an opportunity to rescind the request.

32 II. A patient may rescind such patient's request at any time and in any manner without
33 regard to the patient's mental state. No prescription for medication under this chapter may be
34 written without the attending physician offering the qualified patient an opportunity to rescind the
35 request.

1 III. No fewer than 15 days shall elapse between the patient's initial oral request and the
2 writing of a prescription under this chapter. No fewer that 48 hours shall elapse between the
3 patient's written request and the writing of a prescription under this chapter.

4 137-L:10 Medical Record Documentation Requirements. The following shall be documented or
5 filed in the patient's medical record:

6 I. All oral requests by a patient for medication to end such patient's life in a humane and
7 dignified manner.

8 II. All written requests by a patient for medication to end such patient's life in a humane
9 and dignified manner.

10 III. The attending physician's diagnosis and prognosis, determination that the patient is
11 capable, acting voluntarily, and has made an informed decision.

12 IV. The consulting physician's diagnosis, prognosis, and verification that the patient is
13 capable, acting voluntarily, and has made an informed decision.

14 V. A report of the outcome and determinations made during counseling, if performed.

15 VI. The attending physician's offer to the patient to rescind the patient's request at the time
16 of the patient's second oral request pursuant to RSA 137-L:9.

17 VII. A note by the attending physician indicating that all requirements under this chapter
18 have been met and indicating the steps taken to carry out the request, including a notation of the
19 medication prescribed.

20 137-L:11 Applicability. This chapter shall apply only to requests made by New Hampshire
21 residents or requests by patients regularly treated in a New Hampshire health care facility.

22 137-L:12 Reporting; Rulemaking.

23 I. The division shall adopt rules relative to the collection of information required under this
24 chapter. The information collected shall not be a public record under RSA 91-A and shall not be
25 made available for inspection by the public.

26 II. The division shall annually review a sample of records maintained pursuant to this
27 chapter and shall generate and make available to the public an annual statistical report of the
28 information.

29 137-L:13 Exceptions.

30 I. No provision in a contract, will, or other agreement, whether written or oral, to the extent
31 the provision would affect whether a person may make or rescind a request for medication to end the
32 person's life in a humane and dignified manner, shall be valid.

33 II. No obligation owing under any currently existing contract shall be conditioned or affected
34 by the making or rescinding of a request, by a person, for medication to end such person's life in a
35 humane and dignified manner.

36 III. The sale, procurement, or issuance of any life, health, or accident insurance or annuity
37 policy or the rate charged for any policy shall not be conditioned upon or affected by the making or



1 rescinding of a request, by a person, for medication to end the person's life in a humane and dignified
2 manner. Neither shall a qualified patient's act of ingesting medication to end such patient's life in a
3 humane and dignified manner have an effect upon a life, health, or accident insurance or annuity
4 policy. The rights and obligations of insurers shall not be otherwise altered by this chapter.

5 IV. Nothing in this chapter shall be construed to authorize a physician or any other person
6 to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in
7 accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy
8 killing, or homicide, under the law.

9 137-L:14 Immunities. Except as provided in RSA 137-L:15:

10 I. No person shall be subject to civil or criminal liability or professional disciplinary action
11 for participating in good faith compliance with this chapter. This includes being present when a
12 qualified patient takes the prescribed medication to end the patient's life in a humane and dignified
13 manner.

14 II. No professional organization or association, or health care provider, may subject a person
15 to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other
16 penalty for participating or refusing to participate in good faith compliance with this chapter.

17 III. No request by a patient for or provision by an attending physician of medication in good
18 faith compliance with the provisions of this chapter shall constitute neglect for any purpose of law or
19 provide the sole basis for the appointment of a guardian or conservator.

20 IV. No health care provider shall be under any duty, whether by contract, by statute or by
21 any other legal requirement to participate in the provision to a qualified patient of medication to end
22 the patient's life in a humane and dignified manner. If a health care provider is unable or unwilling
23 to carry out a patient's request under this chapter, and the patient transfers such patient's care to a
24 new health care provider, the prior health care provider shall transfer, upon request, a copy of the
25 patient's relevant medical records to the new health care provider.

26 137-L:15 Liabilities.

27 I. A person who, without authorization of the patient, willfully alters or forges a request for
28 medication or conceals or destroys a rescission of that request with the intent or effect of causing the
29 patient's death shall be guilty of a class A felony.

30 II. A person who coerces or exerts undue influence on a patient to request medication for the
31 purpose of ending the patient's life or to destroy a rescission of such a request shall be guilty of a
32 class A felony.

33 III. Nothing in this chapter limits further liability for civil damages resulting from other
34 negligent conduct or intentional misconduct by any person.

35 IV. The penalties in this chapter do not preclude criminal penalties applicable under other
36 law for conduct which is inconsistent with the provisions of this chapter.



1 137-L:16 Severability. If any provision of this chapter or the application thereof to any person or
2 circumstance is held invalid, the invalidity does not affect other provisions or applications of the
3 chapter which can be given effect without the invalid provisions or applications, and to this end the
4 provisions of this chapter are severable.



2009-0500h

AMENDED ANALYSIS

This bill allows a mentally competent person who is 18 years of age or older and who has been diagnosed as having a terminal disease by the patient's attending physician and a consulting physician to request a prescription for medication which will enable the patient to control the time, place, and manner of such patient's death.

Under this bill, the request shall be witnessed by 2 persons who are not relatives of the patient by blood or marriage, who would not be entitled to any portion of the patient's estate, and who shall not be an owner, operator, or employee of a healthcare facility. The bill requires the division of public health services, department of health and human services, to collect certain information and compile a statistical analysis of such information.