

Analysis of Maine Initiative "Maine Death with Dignity Act"
(§2140 Patient-directed care at the end of life)
(7/19/18)

The Maine initiative, called the "Maine Death with Dignity Act," if approved by voters, would permit a doctor to prescribe "medication" to end the life of a patient if certain conditions are met. It is patterned on Oregon's doctor-prescribed suicide law.

Many people assume that the "medication" would be "a pill" the patient could take and then "slip peacefully away." But this is false. In states where doctor-prescribed suicide is legal, the vast majority of prescriptions are for 100 times the normal dose used for medicinal purposes. When the prescription is taken, the individual dies of a massive drug overdose.

If the "Maine Death with Dignity Act" becomes law:

18-year-olds, who cannot legally buy beer in Maine, would be able to obtain a prescription for a lethal overdose of drugs.

To be eligible for life-ending drugs, the patient must be 18 years old or older,¹ be determined to have a terminal disease and meet additional qualifications.

The definition of "terminal disease," has so many loopholes that one could drive a hearse through them. Individuals who could live for many years would be eligible for doctor-prescribed suicide.

The patient must be diagnosed as having a "terminal disease," defined as "an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within 6 months."² This is identical to Oregon's definition of "terminal disease."³ Notice that this definition does not state that death will occur within six months *with or without medical treatment*.

Examples of eligibility due to having a "terminal disease" in Oregon:

- **A patient who refuses treatment is eligible for the lethal prescription.**
An oncologist and professor of medicine diagnosed a young woman with a condition that gave her a 90 percent chance of survival with recommended treatment. The woman, however, refused the treatment. In an interview, the doctor said, "Why doesn't that patient want to take relatively non-toxic treatment and live for another seven decades?" The doctor ended up prescribing the deadly overdose anyway.⁴
- **If a patient's health care insurance provider refuses to pay for proposed treatment, a patient is eligible for the deadly overdose.**
A research analyst at the Oregon Health Authority, Center for Public Health Practice, Public Health Division (OHA) was asked, if a patient's doctor suggests a treatment that could (a) prolong life or (b) transform a terminal illness to a chronic illness or (c) possibly cure the illness – and if the patient's health insurance provider is not willing to pay for the proposed

treatment – is the patient still eligible under the Death with Dignity Act?

The Oregon official responded: "Patients suffering from any disease (not just those that typically qualify one for the DWDA [Death with Dignity Act]) may not be able to afford some treatments or medication, and may choose not to pursue some treatments or take some medication for personal reasons. This is the patient's decision and the law does not compel them to do otherwise. If the patient does not receive treatment or medication (for whatever reason) and is left with a terminal illness, then s/he would qualify for the DWDA. *I think you could also argue that even if the treatment/medication could actually cure the disease, and the patient cannot pay for the treatment, then the disease remains incurable.*"⁵

Severely depressed or mentally ill patients can receive doctor-prescribed suicide without having any form of counseling.

Even if the patient is severely depressed or has a mental illness, a physician is not required to refer the patient for "counseling," defined as "one or more consultations," unless the physician believes that the patient has "impaired judgment."⁶ As long as the patient can make and communicate decisions and understands what he or she is requesting, no "consultation" is required.

This provision is similar to that contained in Oregon's law where, in the state's eighteenth official report, only 3.8 percent of patients who received lethal prescriptions were referred for a psychological evaluation.⁷ A study about Oregon's law found that it "may not adequately protect all mentally ill patients."⁸

The written request for doctor-prescribed suicide could be witnessed by someone who would benefit financially from the patient's death.

The patient must make two oral requests and one written request.⁹ The written request must be witnessed by two individuals, only one of whom may be entitled to any portion of the patient's estate upon death.¹⁰ The second witness could be a close friend of the potential heir.

This places victims of elder abuse and domestic abuse in great danger since they are unlikely to share their fears with outsiders or to reveal that they are being pressured by family members to "choose" assisted suicide.

The most marginalized individuals – poor, hardworking people – would be in particular danger.

"Choice" is an appealing word but inequity in health care is a harsh reality.

The initiative states that the doctor must inform the patient of all "feasible alternatives"¹¹ to life-ending medication. However, discussing alternatives does not mean the patient will have the resources to access those other options.

Why should the comfortably well off have a choice of treatment options while the poor are left with the only one they can afford – doctor-prescribed suicide?

Assisted suicide would be transformed from a crime into the least expensive "medical treatment" available.

There would be tremendous emotional and financial pressure on patients. Insurance programs would have the opportunity to cut costs since they could deny payment for treatments that patients need and want while approving payment for the far less costly prescription for a drug overdose.

This is happening in states that permit doctor-prescribed suicide.

Referring to payment for assisted suicide, the Oregon Department of Human Services explains, "Individual insurers determine whether the procedure is covered under their policies, just as they do any other medical procedure."¹²

There is documented information about terminally ill patients in Oregon and California who were denied coverage for treatment by insurance providers and, instead, were told that doctor-prescribed suicide would be covered.¹³

In California, after finding that her insurance company would not cover the chemotherapy her doctor had prescribed, a woman asked if assisted suicide was covered under her plan. She was told, "Yes, we do provide that to our patients, and you would only have to pay \$1.20 for the medication."¹⁴

California pays for assisted-suicide drugs obtained by MediCal patients under the state's doctor-prescribed suicide law.¹⁵

If the Maine Initiative becomes law, will insurance programs do the right thing – or the cheap thing?

Once the prescription for the drug overdose is filled, there are no "safeguards."

Like the Oregon law, the Maine initiative only addresses activities taking place until the prescription is filled. There are no provisions to assure that the patient is competent at the time the lethal drug overdose is taken or that he or she knowingly and willingly took the drugs.

Due to this lack of protection, the bill would place patients at enormous risk. For example, someone who would benefit from the individual's death could trick or even force the person into taking the fatal drugs. And no one would ever know.

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Isn't it ironic? At a time when there is tremendous concern about the epidemic of drug overdose deaths, there is a campaign in Maine to promote drug overdoses for some people?

¹ Maine Initiative, "Death with Dignity Act." §2140, 2 A. Definition of "Adult."

² Maine Initiative, §2140, 2 M. Definition of "Terminal disease."

³ Oregon "Death with Dignity Act," ORS 127.800 §1.01 (12).

⁴ Tara Bannow, "Rural Oregonians Still Face Death with Dignity Barriers," *Bend Bulletin*, August 14, 2017. Available at: <http://www.bendbulletin.com/health/5512373-151/oregonians-can-choose-how-their-roads-end>. (Last accessed 5/11/18.)

⁵ Transcript of email interview with questions from Fabian Stahle, Sweden, and answers from Craig New, Research Analyst, December 2017, pg. 3. Available at: http://www.patientsrightscouncil.org/site/wp-content/uploads/2018/06/Stahle_Notarized_02_18-1.pdf. (Last accessed 6/6/18.)

⁶ Maine Initiative, "Death with Dignity Act." §2140, 2 F. Definition of "Counseling;" §2140, 6 F. Attending physician responsibilities; §2140, 8. Counseling referral.

⁷ Official report for 2015 deaths under Oregon's Death with Dignity Act, Oregon Public Health Division, "Oregon Death with Dignity Act: 2015 Data Summary," February 4, 2016, p. 6. Available at: <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year18.pdf>. (Last accessed 2/7/17.)

⁸ Linda Ganzini, Elizabeth R. Goy, Steven K. Dobscha, "Prevalence of depression and anxiety in patients requesting physicians' aid in dying: cross sectional survey," *British Medical Journal*, Oct. 25, 2008, pp. 973-978.

⁹ Maine Initiative, §2140, 11. Written and oral requests.

¹⁰ Maine Initiative, §2140, 5 C. Form of written request.

¹¹ Maine Initiative, §2140, 6 C (5). Attending physician responsibilities.

¹² Oregon Dept. of Human Services, "FAQs about the Death with Dignity Act." Available at: <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/faq5.pdf>. (Last accessed 12/12/17.)

¹³ See, for example: Bradford Richardson, "Assisted-suicide law prompts insurance company to deny coverage to terminally ill California woman," *Washington Times*, October 20, 2016. Available at: <http://www.washingtontimes.com/news/2016/oct/20/assisted-suicide-law-prompts-insurance-company-den>. (Last accessed 12/12/17.)

Also see: Susan Donaldson James, "Death Drugs Cause Uproar in Oregon," *ABC News*, August 6, 2008. Available at: <http://abcnews.go.com/Health/story?id=5517492&page=1>. (Last accessed 12/12/17.)

¹⁴ Bradford Richardson, "Assisted-suicide law prompts insurance company to deny coverage to terminally ill California woman," *Washington Times*, October 20, 2016. Available at: <http://www.washingtontimes.com/news/2016/oct/20/assisted-suicide-law-prompts-insurance-company-den>. (Last accessed 12/12/17.)

¹⁵ Kimberly Leonard, "Californians Can Choose to Die – With the Help of Taxpayers," *U.S. News & World Report*, March 21, 2016. Available at: <https://www.usnews.com/news/articles/2016-03-21/in-california-government-to-pick-up-the-tab-for-death-with-dignity>. (Last accessed 12/12/17.)