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Patients Rights Council Update

The status of 2019 state bills dealing with assisted suicide

Since the beginning of this year, 23 state legislatures have grappled with proposed measures dealing with physician-assisted suicide (PAS), referred to by advocates as medical aid-in-dying (MAID). Some states had multiple bills introduced this year. (See table on p. 2.)

While the majority of the states (19) considered or are still considering bills that would legalize doctor-prescribed suicide, two states—Arkansas and Oklahoma—passed bills that would strengthen their existing laws *against* PAS. A third state—Montana—came very close to passing a bill that would have made PAS illegal by negating the 2009 Montana Supreme Court decision allowing a doctor to use a patient's consent to PAS as his or her defense against the charge of homicide. New York, the fourth state with an anti-PAS bill, has a measure (S 647) that would prohibit insurance coverage for physician-assisted suicide, including payment for the prescribed lethal drugs.

Of the 19 states with bills to legalize doctor-assisted suicide, 12 states—Arizona, Arkansas, Connecticut, Indiana, Iowa, Kansas, Maryland, Nevada, New Mexico, North Carolina, Utah, and Virginia—have rejected those measures by either voting them down, allowing them to languish in committees or legislative files, or they were pulled by sponsors due to lack of support.

As of this writing, eight states still have active bills to legalize PAS or expand an existing PAS law. Those states are Delaware, Maine, Massachusetts, Minnesota, New Hampshire, New York, Oregon, and Rhode Island.

Oregon

Oregon, the state that started it all by passing the first PAS law more than 20 years ago, has four new bills that would loosen and expand key provisions of that law, called the Death with Dignity Act.

HB 2217 would allow the lethal drugs to be administered in other ways besides orally—including by injection. While the bill states that only the patient can self-administer the lethal drugs, the bill's definition of "self-administer" only requires that the patient "take into his or her body medication to end his or her life." [HB 2217, Section 3, §1.01 (12)] That definition would allow another person to insert the drugs, for example, into the patient's mouth or through an IV line, as long as the patient takes them into his or her body by swallowing or simply absorbing them, leaving open the possibility of euthanasia. HB 2217 passed the full House, but was placed on indefinite hold in the Senate Judiciary Committee due to a lack of votes.

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Also in this *Update*

Experts find doctor-assisted deaths can be "inhumane"

In a study, published in the journal *Anaesthesia,* an international research team found that euthanasia and assisted-suicide deaths can be inhumane because some patients can be awake and conscious but unable to move or communicate that they are experiencing serious pain or distress.

Researchers compared these assisted-dying cases to "accidental awareness during general anesthesia" (AAGA) cases, which can occur during surgery when doctors fail to notice that the patient is actually awake and in agony but paralyzed by the anesthesia. This has happened during executions as well, forcing states to stop using certain drugs or methods.

"It is striking," researchers wrote, "that the incidence of 'failure of unconsciousness' is approximately 190 times higher when it is intended that the patient is unconscious at the time of death, as when it is intended they later awaken and recover after surgery."

It was expected that the researchers would find one "optimum" method for achieving unconsciousness at the point of death without patient distress or pain—given the many years of Dutch euthanasia practice and assisted-suicide practice in Oregon. Instead, they discovered many variations of methods. They further found:

> [F]or all these forms of assisted dying, there appears to be a relatively high incidence of vomiting (up to 10%), prolongation of death (up to 7 days), and reawakening from coma (up to 4%), constituting

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State Assisted-Suicide Bills Considered in 2019

(as of May 20 , 2019)

State	Bill	Intro-duced	Purpose	Status
AZ	HB 2408	1/24/19	Legalize PAS	Failed - Not heard in Committee
AR	HB 1536 HB 1625 SB 503	2/20/19 2/27/19 3/6/19	Legalize PAS Create offense for encourage suicide Increase PAS Penalty	Failed to pass committee Passed the House (82-3) Heard in committee 3/18/19
CT	HB 5898 SB 374	1/23/19 1/23/19	Identical bills to legalize PAS	Failed: Lacked support
DE	HB 140	5/2/19	Legalize PAS	HHHD Committee hearing 5/8/19
IN	HB 1184 SB 300	1/8/19 1/7/19	Identical bills to legalize PAS	Failed: No hearing Failed: No Hearing
IA	HF 374 SF 175	2/13/19 2/4/19	Identical bills to legalize PAS	Failed: No hearing Failed: No hearing
KS	HB 2089	1/28/19	Legalize PAS	Failed: No hearing
ME	LD 1313	3/19/19	Legalize PAS	HHS Com. voted "ought not to pass" (8-5); bill goes to full House
MD	HB 399 SB 311	1/30/19 1/30/19	Identical bills to legalize PAS	Passed the House (74-66) Failed in Senate (23-23 Tie)
MA	H 1926 S 1208	1/8/19 1/14/19	Identical bills to legalize PAS	Pending Health Committee Pending Health Committee
MN	HF 2152 SF 2286 SF 2487	3/7/19 3/11/19 3/14/19	Identical bills to legalize PAS Legalize PAS	Pending HHS Committee Pending HHS Committee Pending HHS Committee
MT	HB 284	1/23/19	Establish that patient's consent to PAS is not a legal defense for MDs	Passed the House (53-46) Failed in Senate (22-27)
NC	HB 879	4/16/19	Legalize PAS	Failed crossover deadline
NV	SB 165	2/14/19	Legalize PAS	Passed HHS Committee (3/20/19); Failed: Lacked Senate votes
NH	HB 291	1/22/19	Establish PAS Study Committee	Passed House; Amended & Passed Senate
NJ	A 1504 S 1072	1/9/18 1/22/18	Identical bills to legalize PAS	Passed both houses (3/25/19); Governor signed bill (4/12/19)
NM	HB 90 SB 153	12/18/18 1/22/19	Identical bills to legalize PAS	Failed - Tabled by sponsor due to lack of support
NY	A 2694 S 3947 A 30 S 647	1/25/19 2/21/19 1/9/19 1/9/19	Identical bills to legalize PAS Mandate study by Health Commission Prohibit insurance coverage for PAS	Pending Health Committee Pending Health Committee Pending Health Committee Pending Insurance Committee
OK	SB 108	2/4/19	Mandate PAS patients' death certificates have means of assisted suicide listed as cause of death	Passed both houses Approved by Governor (5/6/19)
OR	HB 2217 HB 2232 HB 2903 SB 579	1/14/19 1/14/19 2/6/19 1/14/19	Expand ways to administer lethal drugs Expand definition of terminal disease Expand definition of terminal disease Add exception to 15-day waiting period	Passed House; Held in Senate No hearings scheduled No hearings scheduled Passed Senate Judiciary (4/8/19)
RI	H 5555 S 157 S 320	2/27/19 1/24/19 2/13/19	Identical bills to legalize PAS	All held for further study by House HEW Com. (3/27/19) and Senate Judiciary Com. (4/25/19)
UT	HB 121	1/9/19	Legalize PAS	Failed - House placed bill in "Did Not Pass" File (3/14/19)
VA	HB 2713	1/15/19	Legalize PAS	Failed - Left in House Court of Justice Committee (2/5/19)

PAS = Physician-Assisted Suicide
HHS = Health & Human Services Committee
HEW = Health, Education & Welfare Committee
HHHD = House Health & Human Development Committee

Status: 2019 bills dealing with PAS, ***cont. from p.1***

Another expansion bill, SB 579, would create exemptions to the two waiting periods currently mandated by Oregon's law. If patients have less than 15 days to live, they could be exempted from both the 15-day and 48-hour required waiting periods and receive a lethal drug prescription any time after their initial death request. SB 579 was passed by the full Senate (16-11) and was sent to the House. Compassion & Choices (C&C), the activist group pushing for assisted-suicide legalization across the country, supported SB 579.

According to the Oregon prescribed-suicide activist group End Choices, the other two expansion bills—HB 2232 and HB 2903—were deemed by the House Health Care Committee chairman to lack sufficient interest for them to be heard. [End Choices Blog, 3/30/19] They are technically alive, but are languishing in that committee.

New Jersey

Only one state has passed a PAS bill this year. After seven years of often intense lobbying and campaigning by C&C and other prescribed-suicide advocates, New Jersey legislators passed the "Medical Aid in Dying for the Terminally Ill Act," a measure modeled after Oregon's "Death with Dignity Act."

Reportedly, some underhanded tactics were employed by the Democratic leadership to ensure that the Senate Health, Human Services, & Senior Citizens Committee—the last major obstacle for the bill—passed the measure. Senate President Steve Sweeney, a longtime PAS advocate and a sponsor of the assisted-suicide bill, replaced two members of that committee just prior to the scheduled hearing. Those two members were going to vote "no" on the measure, so Sen. Sweeney assigned himself and another sponsor of the bill—both obvious "yes" votes—to take their place. The bill was passed by the committee. According to one account, "It [the bill] would have never made it out of committee otherwise." [*Washington Free Beacon,* 2/10/19] In the end, the measure passed both the Assembly and the Senate by the absolute minimum number of votes required. [*MD Magazine,* 3/27/19]

New Jersey Governor Phil Murphy signed the bill into law on April 12, 2019, in a private ceremony. The law will take effect on August 1, 2019. [NJ.com, 4/12/19; AP, 4/12/19] ■

Is anyone paying attention to Oregon's annual assisted-suicide reports?

According to the latest doctor-assisted suicide figures released by the Oregon Public Health Division (OPHD), a record number of lethal prescriptions (249) were written by a record number of individual Oregon doctors (103), which resulted in a record number of prescribed-suicide deaths (168) in 2018. But despite these record breaking statistics, the "Oregon Death with Dignity Act–Data Summary 2018," issued on February 15, 2019, hardly caused a stir. Most of the Oregon media didn't even cover it.

Yet, it's precisely Oregon's reported experience with doctor-prescribed suicide that advocates tout to get other states interested in legalizing the death-inducing practice. They claim the Oregon law has worked flawlessly and without abuse for over 20 years. But that's a claim that cannot be substantiated.

Oregon's law does not give the OPHD either the funds or the authority to investigate assisted-suicide cases. So, if such deaths go unreported by lethally-prescribing doctors, the OPHD can't investigate. It can only process the data it receives from reporting doctors and pharmacists and from information on death certificates.

The sheer amount of "unknown" data listed in OPHD's annual reports also makes it impossible to assess whether the law is working flawlessly without abuses. For example, the 2018 report says that 8 patients experienced complications after ingesting the lethal drugs (regurgitated, regained consciousness, experienced "other" problems), but the complication status for 105 patients is listed as "unknown" by the OPHD. In fact, there have been a total of 738 patients since 1998 for whom this information is "unknown." (See table.) In another category, the OPHD says it doesn't know who, if anyone, was present when 67 patients took the lethal drug cocktail in 2018. Consequently, there is no way to know if those patients voluntarily ingested the drugs or were forced to take them by a greedy heir—a clear abuse of the law. But the public will never know what really occurred.

Also, in 2018, the OPHD referred two doctors to the Oregon Medical Board (OMB) for "failure to comply with [Death with Dignity Act] requirements." The doctors were not named nor were their transgressions explained. Since the DWDA took effect, 24 doctors have been found non-compliant, but so far, there has been no indication that any of those referred to the OMB were penalized in any way. ■

Reported Assisted-Suicide Deaths in Oregon 1998-2018

Report data supplied by lethally prescribing doctors, pharmacist reports, and death certificates.[1]
Figures are those reported by the state in the 2018 report. & previous annual reports

Categories	1998 - 2015	2016	2017	2018	TOTAL
No. of reported assisted-suicide deaths	994[2]	138[2]	158[2]	168	**1459**[1,2]
No. of unreported assisted-suicide deaths	Unknown[1]	Unknown[1]	Unknown[1]	Unknown[1]	**Unknown**[1]
No. of reported lethal prescriptions written	1545	204	219[2]	249	**2217**[2]
No. of doctors who wrote lethal prescriptions in a given year	?[3]	102	92	103	**?**[3]
No. of cases where prescribing doctor was present when lethal drugs were ingested:	→	163[4]	24	32	**220**[2]
Other care provider present:	→	270[4]	24	51	**346**[2]
No provider present:	→	91[4]	6	18	**116**[2]
Unknown:	→	*538*[4]	*89*	*67*	***705***[2]
No. of cases where prescribing doctor was present at the time of death:	→	149[4]	23	28	**201**[2]
Other care provider present:	→	295[4]	19	37	**352**[2]
No provider present:	→	595[4]	101	102	**812**[2]
Unknown:	→	*23*[4]	*0*	*1*	***22***[2]
No. of patients referred for psychiatric evaluation	→	57 [5.1%]	5 [3.5%]	3 [1.8%]	**65 [4.5%]**
Patients' reasons for requesting assisted suicide:					
Loss of autonomy	→	1029 [92%][4]	125 [87%]	154 [95%]	**1322 [96%]**[2]
Inability to do enjoyable activities	→	1011 [90%][4]	126 [88%]	152 [96%]	**1300 [95%]**[2]
Loss of dignity	→	769 [77%][4]	96 [67%]	112 [79%]	**989 [87%]**[2]
Lost control of bodily functions	→	526 [47%][4]	53 [37%]	63 [46%]	**647 [57%]**[2]
Being a burden	→	475 [42%][4]	79 [55%]	91 [54%]	**654 [52%]**[2]
Inadequate pain control or concern about it	→	297 [26%][4]	30 [21%][4]	43 [31%]	**375 [30%]**[2]
Financial implications of treatment	→	39 [4%][4]	8 [6%	9 [7%]	**57 [5%]**[2]
Complications after lethal drugs were ingested:					
Difficulty ingesting/regurgitated	→	24[4]	1	3	**28**
Patient regained consciousness	→	6[4]	1	1	**8**
Seizures	→	0	2	0	**2**
Other	→	7[4]	1	4	**11**[2]
Unknown	→	*537*[4]	*101*	*105*	***738***[2]
Reported incidents of physician non-compliance with the assisted-suicide law[5]	22[5]	0	0	2	**24**[5]
Penalties imposed for non-compliance with the assisted-suicide law[5]	0	0	0	0	**0**

Notes:

1. **The Oregon Public Health Division (OPHD), the agency responsible for overseeing the practice of doctor-prescribed suicide, has acknowledged that it has no way of knowing if deaths went unreported or if the information provided by prescribing doctors is accurate or complete. The Pharmacy Dispensing Report simply asks for general information (i.e., patient & physician names and drugs prescribed) but has no data on patient cases. Death certificates, by law, do not even indicate drug overdose as the true cause of death. Also, the total number of deaths reported for specific years since 1998 are increased retrospectively when OPHD receives data on assisted-suicide deaths that were not previously included in that year's annual report.**
2. **The 2018 Report reflects the official totals from 1998 to 2018. However, for years prior to 2018, the totals listed in individual yearly reports at the time of publication have been subsequently changed with no explanation given. The figures in the TOTAL column (above) are the ones listed in the 2018 Report. Totaling the previous years' figures (above) will likely result in a different TOTAL given that the OPHD changes and adds data reported in previous years.**
3. **Since the OPHD reports do not identify the individual, lethally-prescribing doctors, there is no way to determine the total number of doctors who wrote prescriptions beyond a year at a time.**
4. **In the 2018 Report, this is the combined total for 1998 through 2016. In some categories, the totals may differ from figures reported in previous years. No explanation for the change was given.**
5. **Category is not included in the 2018 Report's tables. Regarding doctor compliance in 2018, the text states, "two physicians were referred to the Oregon Medical Board (OMB) for failure to comply with DWDA requirements." Of the 24 doctors who have been referred to the OMB over the years, not one has been penalized thus far.**

Source:

Oregon Public Health Division, "Oregon Death with Dignity Act - Data Summary 2018 ," released *2/15/*19; revised 4/25/19.

All 21 annual reports are available online at: https://www.oregon.gov/oha/ph/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ar-index.aspx

News briefs from home & abroad . . .

- **Opioid use & chronic pain patients:** In 2016, the Centers for Disease Control & Prevention (CDC) issued an opioid prescribing guideline for adults with chronic pain in the hope of curbing the alarming number of deaths from opioid abuse. In spite of the fact that over 60% of the opioid deaths from that year were caused by illegal street drugs not by prescription drugs, a rash of regulations, policies, and general hysteria resulted in many doctors significantly reducing pain control doses and even refusing to fill prescriptions for patients who never abused their opioid drugs over many years of chronic pain treatment. Some insurance companies jumped at the chance to deny payment for opioid prescriptions, pushing many patients to despair.

  "We have a terrible problem," said Dr. Thomas Kline, a practicing physician and former Harvard Medical School administrator. "We have people committing suicide for no other reason than being forced to stop opioids, pain medication, for chronic pain.... There are five to seven million people being tortured on purpose." [Fox News, 12/10/18] Dr. Stefan Kertesz, an internist at the University of Alabama, agreed. "In my heart, these are innocent people who are almost in the position of being put to death against their will," he said. Kertesz, along with three former White House drug "czars" and more than 300 others, wrote to the CDC to ask for clarification on the chronic pain guideline. CDC Director Robert Redfield, MD, responded, "The Guideline does not endorse mandated or abrupt dose reduction or discontinuation, as these actions result in patient harm." [*JAMA*, 4/29/19]

- **Canada embraces euthanasia at a shocking rate:** In April of this year, the Canadian government issued its Fourth Interim Report on Medical Assistance in Dying (MAID) in Canada. The report covers only 10 months in 2018, from January 1 to October 31. The data show that there were 2,614 MAID deaths during that period and 6,749 MAID deaths in the two years since the euthanasia and assisted-suicide law took effect in June 2016. The high death count is alarming given that MAID deaths in the Yukon, Northwest Territories and Nunavut, and some in Quebec are not even included in the report. [Health Canada, *Fourth Interim Report on Medical Assistance in Dying*, 4/19]

  Evidence of Canada's rapid acceptance of MAID also includes repeated calls for expanding euthanasia access to minors, the mentally ill, dementia patients, and those who want euthanasia by removal of their organs. Last year, the *New England Journal of Medicine* (NEJM) published an article by two Canadians (Dr. Ian Ball & Robert Sibbald) and one American (Dr. Robert D. Truog) that explored the possibility of removing fresh organs from living donors who voluntarily request euthanasia. The authors contend that some voluntary euthanasia patients "may want not only a rapid, peaceful, and painless death, but also the option of donating as many organs as possible and in the best condition possible." Further, they wrote, "Following the dead donor rule [donor must be dead before organs can be harvested] could interfere with the ability of these patients to achieve their goals." [Ball et al., *NEJM*, 9/6/18]

- **French patient's life-sustaining treatment withheld, then restored:** On 5/20/19, doctors in Reims, France, stopped all food and fluids for 42-year-old Vincent Lambert, a vegetative state patient who is otherwise healthy. Lambert's parents fought a long court battle to save his life after his 2008 car crash, but his wife prevailed in getting his life-support stopped. Then hours after his feeding ceased, a Paris appeals court surprisingly ordered Lambert's food and fluids restored pending a review by the UN Committee on the Rights of Persons with Disabilities. [*NY Times,* 5/20/19] ■

Experts find doctor-assisted deaths can be "inhumane," *cont. from p. 1*

failure of unconsciousness. This raises a concern that some deaths may be inhumane....

Lawmakers and others, researchers wrote, have the responsibility to make sure that any assisted-dying law being considered expressly requires the optimum method to bring about death. That method would have to require professional anesthetic expertise and oversight. "Otherwise," the authors wrote, "there is a risk vulnerable citizens may be killed by suboptimal or even cruel means." [S. Sinmyee et al., "Legal & ethical implications of defining an optimum means of achieving unconsciousness in assisted dying,"*Anaesthesia,* 2/10/19]

None of the existing US assisted-suicide laws or bills currently being considered in state legislatures stipulate the method of death to be used on qualified patients. Evidently, for some legislators to support assisted-dying legalization, advocates only have to claim (erroneously) that patients will be guaranteed a dignified, peaceful, and pain-free death. ■

The Patients Rights Council is a human rights group formed to promote and defend the right of all patients to be treated with respect, dignity and compassion and to work with individuals and organizations to resist attitudes, programs and policies which threaten the lives of those who are medically vulnerable. To those ends, the PRC compiles well-documented and up-to-date information on a whole range of end-of-life issues, including health care advance directives, futile care policies, health care reform, and doctor-prescribed death.

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