

SENATE No. 2745

The Commonwealth of Massachusetts

—
In the One Hundred and Ninety-First General Court
(2019-2020)
—

SENATE, June 8, 2020.

The committee on Public Health to whom was referred the petition (accompanied by bill, Senate, No. 1208) of William N. Brownsberger, Louis L. Kafka, Harriette L. Chandler, Brian M. Ashe and other members of the General Court for legislation relative to end of life options, reports recommending that the accompanying bill (Senate, No. 2745) ought to pass.

For the committee,
Joanne M. Comerford

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to end of life options.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws, as appearing in the 2018 Official Edition, is hereby amended by
2 inserting after Chapter 201F the following chapter:-

3 CHAPTER 201G

4 MASSACHUSETTS END OF LIFE OPTIONS ACT

5 Section 1. For the purposes of this chapter, the following terms shall have the following
6 meanings unless the context clearly requires otherwise:

7 “Adult”, an individual who is 18 years of age or older.

8 “*Aid in Dying*”, the medical practice of a physician prescribing lawful medication to a
9 qualified patient, which the patient may choose to self-administer to bring about a peaceful
10 death.

11 “*Attending physician*”, the physician who has primary responsibility for the care of a
12 terminally ill patient.

13 “Capable”, having the capacity to make informed, complex health care decisions;
14 understand the consequences of those decisions; and to communicate them to health care
15 providers, including communication through individuals familiar with the patient’s manner of
16 communicating if those individuals are available.

17 “Consulting physician”, a physician who is qualified by specialty or experience to make a
18 professional diagnosis and prognosis regarding a terminally ill patient’s condition.

19 “Counseling”, one or more consultations as necessary between a licensed mental health
20 professional and a patient for the purpose of determining that the patient is capable and not
21 suffering from a psychiatric or psychological disorder or depression causing impaired judgment.
22 A licensed mental health professional, as defined by the department of public health for the
23 purposes of this chapter, that is part of an interdisciplinary team defined in 105 CMR 141.203,
24 for a patient receiving hospice care, may provide the necessary consultations, provided that a
25 consultation occurs after the patient has made the oral request.

26 “Guardian”, an individual who has qualified as a guardian of an incapacitated person
27 pursuant to court appointment and includes a limited guardian, special guardian and temporary
28 guardian, but excludes one who is merely a guardian ad litem as defined in section 5-101 of
29 article V of chapter 190B. Guardianship shall not include a health care proxy as defined by
30 chapter 201D.

31 “Health care provider”, an individual licensed, certified, or otherwise authorized or
32 permitted by law to administer health care or dispense medication in the ordinary course of
33 business or practice of a profession, including a health care facility.

34 “Incapacitated person”, an individual who for reasons other than advanced age or being a
35 minor, has a clinically diagnosed condition that results in an inability to receive and evaluate
36 information or make or communicate decisions to such an extent that the individual lacks the
37 ability to meet essential requirements for physical health, safety, or self-care, even with
38 appropriate technological assistance. An “incapacitated person” shall be defined consistent with
39 the definition of an individual described in section 5-101 of article V of chapter 190B.

40 “Informed decision”, a decision by a qualified patient to request and obtain a prescription
41 for medication pursuant to this chapter that is based on an understanding and acknowledgment of
42 the relevant facts and that is made after being fully informed by the attending physician of:

- 43 (a) the patient’s medical diagnosis;
- 44 (b) the patient’s prognosis;
- 45 (c) the potential risks associated with taking the medication to be prescribed;
- 46 (d) the probable result of taking the medication to be prescribed; and
- 47 (e) the feasible alternatives or additional treatment opportunities, including, but not
48 limited to, palliative care as defined in section 227 of chapter 111.

49 “Medically confirmed,” the medical opinion of the attending physician has been
50 confirmed by a consulting physician who has examined the patient and the patient’s relevant
51 medical records.

52 “Medication”, aid in dying medication.

53 “Palliative care”, a health care treatment as defined in section 227 of chapter 111,
54 including interdisciplinary end-of-life care and consultation with patients and family members, to
55 prevent or relieve pain and suffering and to enhance the patient’s quality of life, including
56 hospice.

57 “Patient”, an individual who has received health care services from a health care provider
58 for treatment of a medical condition.

59 “Physician”, a doctor of medicine or osteopathy licensed to practice medicine in
60 Massachusetts by the board of registration in medicine.

61 “Qualified patient”, a capable adult who is a resident of Massachusetts, has been
62 diagnosed as being terminally ill, and has satisfied the requirements of this chapter.

63 “Resident”, an individual who demonstrates residency in Massachusetts by presenting
64 one form of identification which may include but is not limited to:

65 (a) possession of a Massachusetts driver’s license;

66 (b) proof of registration to vote in Massachusetts;

67 (c) proof that the individual owns or leases real property in Massachusetts;

68 (d) proof that the individual has resided in a Massachusetts health care facility for at least
69 3 months;

70 (e) Computer-generated bill from a bank or mortgage company, utility company, doctor,
71 or hospital;

72 (f) A W-2 form, property or excise tax bill, or Social Security Administration or other
73 pension or retirement annual benefits summary statement dated within the current or prior year;

74 (g) A MassHealth or Medicare benefit statement; or

75 (h) Filing of a Massachusetts tax return for the most recent tax year.

76 “Self-administer”, a qualified patient’s act of ingesting medication obtained pursuant to
77 this chapter.

78 “Terminally ill”, having a terminal illness or condition which can reasonably be expected
79 to cause death within 6 months, whether or not treatment is provided.

80 Section 2. (a) A patient wishing to receive a prescription for medication pursuant to this
81 chapter shall make an oral request to the patient's attending physician. No less than 15 days after
82 making the request the patient shall submit a written request to the patient's attending physician
83 in substantially the form set in section 4.

84 (b) A terminally ill patient may voluntarily make an oral request for aid in dying and a
85 prescription for medication that the patient can choose to self-administer to bring about a
86 peaceful death if the patient:

87 (1) is a capable adult;

88 (2) is a resident of Massachusetts; and

89 (3) has been determined by the patient’s attending physician to be terminally ill.

90 (c) A patient may provide a written request for aid in dying and a prescription for
91 medication that the patient can choose to self-administer to bring about a peaceful death if the
92 patient:

93 (1) has met the requirements in subsection (b);

94 (2) has been determined by a consulting physician to be terminally ill;

95 (3) has been approved by a licensed mental health professional; and

96 (4) has had no less than 15 days pass after making the oral request.

97 (d) A patient shall not qualify under this chapter if the patient has a guardian.

98 (e) A patient shall not qualify under this chapter solely because of age or disability.

99 Section 3. (a) A valid written request must be witnessed by at least two individuals who,
100 in the presence of the patient, attest that to the best of their knowledge and belief that patient is:

101 (1) personally known to the witnesses or has provided proof of identity;

102 (2) acting voluntarily; and

103 (3) not being coerced to sign the request.

104 (b) At least one of the witnesses shall be an individual who is not:

105 (1) a relative of the patient by blood, marriage, or adoption;

106 (2) an individual who at the time the request is signed would be entitled to any portion of
107 the estate of the qualified patient upon death under any will or by operation of law;

108 (3) financially responsible for the medical care of the patient; or

109 (4) an owner, operator, or employee of a health care facility where the qualified patient is
110 receiving medical treatment or is a resident.

111 (d) The patient's attending physician at the time the request is signed shall not serve as a
112 witness.

113 (e) If the patient is a patient in a long-term care facility at the time the written request is
114 made, one of the witnesses shall be an individual designated by the facility.

115 Section 4.

116 REQUEST FOR AID IN DYING MEDICATION PURSUANT TO THE
117 MASSACHUSETTS END OF LIFE OPTIONS ACT

118 I, , am an adult of sound mind and a resident of the State of
119 Massachusetts. I am suffering from , which my attending physician has
120 determined is a terminal illness or condition which can reasonably be expected to cause death
121 within 6 months. This diagnosis has been medically confirmed as required by law.

122 I have been fully informed of my diagnosis, prognosis, the nature of the aid in dying
123 medication to be prescribed and potential associated risks, the expected result, and the feasible
124 alternatives and additional treatment opportunities, including comfort care, hospice care, and
125 pain control.

126 I request that my attending physician prescribe aid in dying medication that will end my
127 life in a peaceful manner if I choose to take it, and I authorize my attending physician to contact
128 any pharmacist to fill the prescription.

129 I understand that I have the right to rescind this request at any time. I understand the full
130 import of this request and I expect to die if I take the aid in dying medication to be prescribed. I
131 further understand that although most deaths occur within three hours, my death may take longer
132 and my physician has counseled me about this possibility. I make this request voluntarily,
133 without reservation, and without being coerced, and I accept full responsibility for my actions.

134 Signed:..... Dated:.....

135 DECLARATION OF WITNESSES

136 By signing below, on the date the patient named above signs, we declare that the patient
137 making and signing the above request is personally known to us or has provided proof of
138 identity, and appears to not be under duress, fraud, or undue influence.

139 Printed Name of Witness 1:

140 Signature of Witness 1/Date:

141 Printed Name of Witness 2:

142 Signature of Witness 2/Date:

143 Section 5. (a) A qualified patient may at any time rescind the request for medication
144 pursuant to this chapter without regard to the qualified patient's mental state.

145 (b) A prescription for medication under this chapter may not be written without the
146 attending physician offering the qualified patient an opportunity to rescind the request for
147 medication.

148 Section 6. (a) The attending physician shall:

149 (1) make the initial determination of whether an adult patient:

150 (i) is a resident of this state;

151 (ii) is terminally ill;

152 (iii) is capable; and

153 (iv) has voluntarily made the request for aid in dying.

154 (2) ensure that the patient is making an informed decision by discussing with the patient:

155 (i) the patient's medical diagnosis;

156 (ii) the patient's prognosis;

157 (iii) the potential risks associated with taking the medication to be prescribed;

158 (iv) the probable result of taking the medication to be prescribed; and

159 (v) the feasible alternatives and additional treatment opportunities, including, but not
160 limited to, palliative care as defined in section 227 of chapter 111.

161 (3) refer the patient to a consulting physician to medically confirm the diagnosis and
162 prognosis and for a determination that the patient is capable and is acting voluntarily;

- 163 (4) refer the patient for counseling pursuant to section 8;
- 164 (5) ensure that sections 6 through 8, inclusive, of this chapter are followed in
165 chronological order;
- 166 (6) have a prior clinical relationship with the patient, unless the patient's primary care
167 physician is unwilling to participate;
- 168 (7) recommend that the patient notify the patient's next of kin;
- 169 (8) recommend that the patient complete a Medical Order for Life-Sustaining Treatment
170 form;
- 171 (9) counsel the patient about the importance of:
- 172 (i) having another individual present when the patient takes the medication prescribed
173 pursuant to this chapter; and
- 174 (ii) not taking the medication in a public place;
- 175 (10) inform the patient that the patient may rescind the request for medication at any time
176 and in any manner;
- 177 (11) verify, immediately prior to writing the prescription for medication, that the patient
178 is making an informed decision;
- 179 (12) educate the patient on how to self-administer the medication;
- 180 (13) fulfill the medical record documentation requirements of section 13;

181 (14) ensure that all appropriate steps are carried out in accordance with this chapter
182 before writing a prescription for medication for a qualified patient; and

183 (15) (i) dispense medications directly, including ancillary medications intended to
184 facilitate the desired effect to minimize the patient's discomfort, if the attending physician is
185 authorized under law to dispense and has a current drug enforcement administration certificate;
186 or

187 (ii) with the qualified patient's written consent;

188 (A) contact a pharmacist, inform the pharmacist of the prescription, and

189 (B) deliver the written prescription personally, by mail, or by otherwise
190 permissible electronic communication to the pharmacist, who will dispense the medications
191 directly to either the patient, the attending physician, or an expressly identified agent of the
192 patient. Medications dispensed pursuant to this paragraph shall not be dispensed by mail or other
193 form of courier.

194 (b) The attending physician may sign the patient's death certificate which shall list the
195 underlying terminal disease as the cause of death.

196 Section 7. (a) Before a patient may be considered a qualified patient under this chapter
197 the consulting physician shall:

198 (1) examine the patient and the patient's relevant medical records;

199 (2) confirm in writing the attending physician's diagnosis that the patient is suffering
200 from a terminal illness; and

- 201 (3) verify that the patient:
- 202 (i) is capable;
- 203 (ii) is acting voluntarily; and
- 204 (iii) has made an informed decision.

205 Section 8. (a) An attending physician shall refer a patient who has requested medication
206 under this chapter to counseling to determine that the patient is not suffering from a psychiatric
207 or psychological disorder or depression causing impaired judgment. The licensed mental health
208 professional shall review the medical history of the patient relevant to the patient's current
209 mental health and then shall submit a final written report to the prescribing physician.

210 (b) The medication may not be prescribed until the individual performing the counseling
211 determines that:

212 (1) the patient is not suffering from a psychiatric or psychological disorder or depression
213 causing impaired judgment; and

214 (2) the licensed mental health professional has no reason to suspect coercion in the
215 patient's decision-making process.

216 Section 9. A qualified patient may not receive a prescription for medication pursuant to
217 this chapter unless the patient has made an informed decision. Immediately before writing a
218 prescription for medication under this chapter the attending physician shall verify that the
219 qualified patient is making an informed decision.

220 Section 10. The attending physician shall recommend that a patient notify the patient's
221 next of kin of the patient's request for medication pursuant to this chapter. A request for
222 medication shall not be denied because a patient declines or is unable to notify the next of kin.

223 Section 11. The following items shall be documented or filed in the patient's medical
224 record:

225 (1) the determination and the basis for determining that a patient requesting medication
226 pursuant to this chapter is a qualified patient;

227 (2) all oral requests by a patient for medication;

228 (3) all written requests by a patient for medication made pursuant to sections 3 through 5;

229 (4) the attending physician's diagnosis, prognosis, and determination that the patient is
230 capable, is acting voluntarily, and has made an informed decision;

231 (5) the consulting physician's diagnosis, prognosis, and verification that the patient is
232 capable, is acting voluntarily, and has made an informed decision;

233 (6) a report of the outcome and determinations made during counseling;

234 (7) the attending physician's offer before prescribing the medication to allow the qualified
235 patient to rescind the patient's request for the medication; and

236 (8) other care options that were offered to the patient, including, but not limited to,
237 hospice and palliative care; and

238 (9) a note by the attending physician indicating:

239 (a) that all requirements under this chapter have been met; and

240 (b) the steps taken to carry out the request, including a notation of the medication

241 prescribed.

242 Section 12. Any medication dispensed under this chapter that was not self-administered

243 shall be disposed of by lawful means. The medication dispenser shall be responsible for

244 informing the individual collecting the medication what disposal by lawful means entails.

245 Section 13. Physicians shall keep a record of the number of requests; number of

246 prescriptions written; number of requests rescinded; the number of qualified patients that took

247 the medication under this chapter; the general demographic and socioeconomic characteristics of

248 the patient, and any physical disability of the patient. This data shall be reported to the

249 department of public health annually, and shall subsequently be made available to the public.

250 Section 14. (a) Any provision in a contract, will, or other agreement, whether written or

251 oral, to the extent the provision would affect whether a patient may make or rescind a request for

252 medication pursuant to this chapter, is not valid.

253 (b) A qualified patient's act of making or rescinding a request for aid in dying shall not

254 provide the sole basis for the appointment of a guardian or conservator.

255 (c) A qualified patient's act of self-administering medication obtained pursuant to this act

256 shall not constitute suicide or have an effect upon any life, health, or accident insurance or

257 annuity policy.

258 (d) Actions taken by health care providers and patient advocates supporting a qualified

259 patient exercising his or her rights pursuant to this chapter, including being present when the

260 patient self-administers medication, shall not for any purpose, constitute elder abuse, neglect,
261 assisted suicide, mercy killing, or homicide under any civil or criminal law.

262 (e) State regulations, documents and reports shall not refer to the practice of aid in dying
263 under this chapter as "suicide" or "assisted suicide."

264 Section 15. (a) A health care provider may choose whether to voluntarily participate in
265 providing to a qualified patient medication pursuant to this chapter and shall not be under any
266 duty, whether by contract, by statute, or by any other legal requirement, to participate in
267 providing a qualified patient with the medication.

268 (b) A health care provider or professional organization or association may not subject an
269 individual to censure, discipline, suspension, loss of license, loss of privileges, loss of
270 membership, or other penalty for participating or refusing to participate in providing medication
271 to a qualified patient pursuant to this chapter.

272 (c) If a health care provider is unable or unwilling to carry out a patient's request under
273 this chapter and the patient transfers care to a new health care provider, the prior health care
274 provider shall transfer, upon request, a copy of the patient's relevant medical records to the new
275 health care provider.

276 (d) (1) Health care providers shall maintain and disclose upon request their written
277 policies outlining the extent to which they refuse to participate in providing to a qualified patient
278 any medication pursuant to this chapter.

279 (2) The required consumer disclosure shall at minimum:

280 (i) include information about this chapter;

- 281 (ii) identify the specific services in which they refuse to participate;
- 282 (iii) clarify any difference between institution-wide objections and those that may be
283 raised by individual licensed providers who are employed or work on contract with the provider;
- 284 (iv) describe the mechanism the provider will use to provide patients a referral to another
285 provider or provider in the provider's service area who is willing to perform the specific health
286 care service;
- 287 (v) describe the provider's policies and procedures relating to transferring patients to
288 other providers who will implement the health care decision; and
- 289 (vi) inform consumers that the cost of transferring records will be borne by the
290 transferring provider.

291 (c) The consumer disclosure shall be provided to an individual upon request.

292 Section 16. (a) Purposely or knowingly altering or forging a request for medication
293 pursuant to this chapter without authorization of the patient or concealing or destroying a
294 rescission of a request for medication is punishable as a felony if the act is done with the intent
295 or effect of causing the patient's death.

296 (b) An individual who coerces or exerts undue influence on a patient to request
297 medication to end the patient's life, or to destroy a rescission of a request, shall be guilty of a
298 felony punishable by imprisonment in the state prison for not more than 3 years or in the house
299 of correction for not more than 2 ½ years or by a fine of not more than \$1,000 or by both such
300 fine and imprisonment.

301 (c) Nothing in this chapter limits further liability for civil damages resulting from other
302 negligent conduct or intentional misconduct by any individual.

303 (d) The penalties in this chapter do not preclude criminal penalties applicable under other
304 law for conduct inconsistent with the provisions of this chapter.

305 Section 17. A governmental entity that incurs costs resulting from a qualified patient self-
306 administering medication in a public place while acting pursuant to this chapter may submit a
307 claim against the estate of the patient to recover costs and reasonable attorney fees related to
308 enforcing the claim.

309 Section 18. If an emergency medical provider finds a patient who has self-administered
310 the prescription, they shall follow standard resuscitation protocol. If a Medical Order for Life-
311 Sustaining Treatment or other legally recognized do-not-resuscitate order is found, then the
312 medical provider shall follow the directives of the form.

313 Section 19. Nothing in this chapter may be construed to authorize a physician or any
314 other individual to end a patient's life by lethal injection, mercy killing, assisted suicide, or active
315 euthanasia.

316 Section 20. If any provision of this chapter or its application to any individual or
317 circumstance is held invalid, the remainder of the act or the application of the provision to other
318 individuals or circumstances is not affected.