

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Support Death with Dignity**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2. Right to information.** A patient has a right to information regarding all treatment options reasonably available for the care of the patient, including, but not limited to, information in response to specific questions about the foreseeable risks and benefits of medication, without the physician's withholding requested information regardless of the purpose of the questions or the nature of the information.

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

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

A. The patient shall complete the following actions:

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

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

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

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

B. The physician shall complete the following actions:

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

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

(a) Documentation of the initial and 2nd oral requests made under paragraph A, subparagraphs (1) and (2), including the wording of the requests;

(b) A statement that the physician offered the patient an opportunity to rescind the 2nd oral request made under paragraph A, subparagraph (2) and the opportunity to rescind the written request at any time, including the wording of the offers of opportunities to rescind;

(c) A statement that the physician has informed the patient orally and in writing of the following:

(i) The patient's medical diagnosis;

(ii) The patient's medical prognosis, including acknowledgment that the physician's prediction of the patient's life expectancy is an estimate based on the physician's best medical judgment and is not a guarantee of the actual time remaining in the patient's life and that the patient could live longer than the time predicted;

(iii) The range of treatment options appropriate for the patient and the patient's diagnosis;

(iv) If the patient is not enrolled in hospice care, all feasible end-of-life services, including palliative care, comfort care, hospice care and pain control;

(v) The range of possible results, including, but not limited to, potential risks associated with taking the medication to be prescribed; and

(vi) The probable result of taking the medication to be prescribed;

(d) A statement that the physician referred the patient to a 2nd physician for medical confirmation of the diagnosis and prognosis;

(e) A statement that the patient meets the definition of "patient" as provided in subsection 1, paragraph H, is capable and is making a voluntary request and an informed decision;

(f) A statement that the physician has determined that the patient does not have impaired judgment or, in the alternative, that the physician has referred the patient for an evaluation by a licensed psychiatrist, psychologist or clinical social worker and that that person has determined that the patient is capable and does not have impaired judgment;

(g) A statement that the physician, after obtaining the consent of the patient, consulted with the patient's primary care physician if the patient has a primary care physician;

(h) A statement that the requirements of divisions (a) to (g) were completed immediately prior to writing the prescription and that the prescription was written no earlier than 48 hours after the patient's written request under paragraph A;

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

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

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

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

**6. No duty to aid or participate.** A patient who acts to self-administer a lethal dose of medication in accordance with this section is not, as a result of taking those actions, a dependent adult as defined in Title 22, section 3472, subsection 6, an incapacitated adult as defined in Title 22, section 3472, subsection 10 or in need of protective services as defined in Title 22, section 3472, subsection 12. A person who is present when a patient, having followed the procedures required by this section, self-administers a lethal dose of medication does not have a duty to aid the patient and is not subject to

civil or criminal liability solely for being present or solely for not acting to prevent the patient from self-administering the medication. A person does not have a duty, by law or contract, to participate in the provision of a lethal dose of medication to a patient.

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

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

**9. Insurance policy prohibitions.** A patient whose life is insured under a life insurance policy issued under the provisions of Title 24-A, chapter 29 and the beneficiaries of the policy may not be denied benefits on the basis of self-administration of medication by the patient in accordance with this section. The sale, procurement or issuance of any medical professional liability insurance policy issued under the provisions of Title 24-A and the rate charged by the insurer for the policy may not be conditioned upon or affected by the participation by the health care provider in the provision of medication to a patient in accordance with this section.

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

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

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

## **SUMMARY**

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