

BILL NO A02383

SAME AS SAME AS [S03151](#)

COSPNSR Rosenthal, Gottfried, Dinowitz, Galef, Hevesi, Steck, Blake, Lavine, Lupardo, Sepulveda, Harris, Abinanti, Rodriguez, Jaffee, Jones, D'Urso, Miller MG, Ortiz, Arroyo, Simotas, Errigo, Vanel, Quart

MLTSPNSR Braunstein, Crouch, Magee, Skartados

Add Art 28-F §§2899-d - 2899-s, Pub Health L

Relates to the medical aid in dying act; relates to a terminally ill patient's request for and use of medication for medical aid in dying.

A02383 Memo:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A2383

SPONSOR: Paulin (MS)

TITLE OF BILL: An act to amend the public health law, in relation to a terminally ill patient's request for and use of medication for medical aid in dying

PURPOSE:

To provide that a mentally competent, terminally ill patient may request medication to be self-administered for the purpose of hastening the patient's death provided the requirements set forth in the act are met, and to provide certain protection and immunities to health care providers and other persons, including a physician who prescribes medication in compliance with the provisions of the article to the terminally ill

patient to be self-administered by the patient.

SUMMARY OF PROVISIONS:

Section 1 provides that this act shall be known and may be cited as the "Medical Aid in Dying Act".

Section 2 amends the Public Health Law by adding a new article 28-F, Medical Aid in Dying, comprised of the following sections:

§ 2899-d sets forth definitions.

§ 2899-e sets forth the request process by which a patient may request medication for the purpose of ending his or her life in accordance with this article. The patient wishing to request such medication shall make an oral request and submit a written request, which shall be signed and dated by the patient and witnessed by at least two adults as provided in such section, identifying persons who shall not serve as witnesses. The patient's attending physician, consulting physician and, if applicable, the mental health professional who provides a capacity determination of the patient under the article shall not act as a witness.

§ 2899-f sets forth the responsibilities of the attending physician.

§ 2899-g provides that a patient may at any time rescind a request for medication without regard to the patient's capacity, and that the attending physician may not write a prescription for medication without first offering the patient an opportunity to rescind the request.

§ 2899-h sets forth the responsibilities of the consulting physician.

§ 2899-i provides that if the attending physician or the consulting physician believes that the patient may lack capacity, such physician shall refer the patient to a mental health professional for a determination of whether the patient has capacity. If the mental health professional determines that the patient lacks capacity to make an informed decision, the patient shall not be deemed a qualified individual and the attending physician shall not prescribe medication to the patient.

§ 2899-j sets forth the items that must be documented or filed in the patient's medical record.

§2899-k sets forth the form of written request for medication and declaration of witnesses. The section also provides that the written request shall be written in the same language as the conversations or consultations between a patient and at least one of his or her attending or consulting physicians, provided that the written request may be in English, even if the conversations or consultations were conducted in a language other than English, if the form of written request includes the form of interpreter's declaration set forth in the section.

§2899-l provides that a physician, pharmacist, other health care professional or other person shall not be subject to civil or criminal liability or professional disciplinary action by any government entity for taking any reasonable good-faith action or refusing to act under the article, including without limitation, engaging in discussions with a

patient relating to the risks and benefits of end-of-life options in the circumstances described in the article and being present when a qualified individual self-administers medication. The section further provides that nothing in the section shall limit civil or criminal liability for negligence, recklessness or intentional misconduct.

§ 2899-m provides that a physician, nurse, pharmacist, other health care provider or other person shall not be under any duty by law or contract to participate in the provision of medication to a patient. If a health care provider is unable or unwilling to participate in the provision of medication to a patient and the patient transfers care to a new health care provider, the prior health care provider shall transfer or arrange for the transfer, upon request, of a copy of the patient's relevant medical records to the new health care provider. A private health care facility may prohibit the prescribing, dispensing, ordering or self-administering of medication under the article while the patient is being treated in or while the patient is residing in such facility if the requirements set forth in the section have been met. In addition, where a health care facility has adopted a prohibition under the subdivision, if a patient who wishes to use medication under the article requests, the patient shall be transferred promptly to another health care facility that is reasonably accessible under the circumstances and willing to permit the prescribing, dispensing, ordering or self-administering of medication with respect to the patient. Where a health care facility has adopted a prohibition under the subdivision, any health care provider or employee of the facility who violates the prohibition may be subject to sanctions otherwise available to the facility, provided the facility has previously notified the health care provider or employee of the prohibition in writing.

§ 2899-n provides that (i) a patient who requests medication under the article will not, because of that request, be considered a person who is suicidal, and self-administering medication under the article shall not be deemed to be suicide for any purpose, (ii) action taken in accordance with the article shall not be construed for any purpose to constitute suicide, assisted suicide, attempted suicide, promoting a suicide attempt, mercy killing, or homicide under the law, including as an accomplice or accessory or otherwise, (iii) no provision in a contract, will or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication or take any other action under the article, shall be valid, (iv) no obligation owing under any contract will be conditioned upon or affected by the making or rescinding of a request by a person for medication or taking any other action under the article, (v) a person and his or her beneficiaries shall not be denied benefits under a life insurance policy for actions taken in accordance with the article, and the sale, procurement or issuance of a life or health insurance or annuity policy or the rate charged for the policy may not be conditioned upon or affected by the patient making or rescinding a request for medication under the article, (vi) an insurer shall not provide any information in communications made to a patient about the availability of medication under the article absent a request by the patient or by his or her attending physician upon the request of such patient, and any communication shall not include both the denial of coverage for treatment and information as to the availability of medication under the article, and (vii) the sale, procurement or issue of any professional malpractice insurance policy or the rate charged for the policy shall not be condi-

tioned upon or affected by whether the insured does or does not take or participate in any action under the article.

§ 2899-o provides that the department of health shall make regulations providing for the safe disposal of unused medications prescribed, dispensed or ordered under the article.

§ 2899-p provides that if otherwise authorized by law, the attending physician may sign the qualified individual's death certificate. The cause of death listed on a qualified individual's death certificate who dies after self-administering medication under the article will be the underlying terminal illness.

§ 2899-q provides for the annual review by the commissioner of health of a sample of the records maintained under section twenty-eight hundred ninety-nine-j of the article. The commissioner shall adopt regulations establishing reporting requirements for physicians taking action under the article to determine utilization and compliance with the article. The information collected under the section shall not constitute a public record available for public inspection and shall be confidential and shall be collected and maintained in a manner that protects the privacy of the patient, his or her family, and any health care provider acting in connection with such patient under the article, except that such information may be disclosed to a governmental agency as authorized or required by law relating to professional discipline, protection of public health or law enforcement. The commissioner shall prepare a report annually containing relevant data regarding utilization and compliance with the article and shall post such report on its website.

§ 2899-r provides that nothing in the article shall be construed to limit professional discipline or civil liability resulting from conduct in violation of the article, negligent conduct, or intentional misconduct by any person. Conduct in violation of the article shall be subject to applicable criminal liability under state law, including where appropriate and without limitation, offenses constituting homicide, forgery, coercion, and related offenses, or federal law.

§ 2899-s provides the severability clause. Section 3 sets forth the effective date.

JUSTIFICATION:

The highly publicized, planned death of Brittany Maynard has highlighted the need for terminally ill patients to be able to access aid in dying. Ms. Maynard, who was a native of California, was forced to move to Oregon to gain control of her dying process. Her death, and the accompanying press attention, led the California legislature to pass, and Governor Jerry Brown to sign, an aid in dying law on October 5, 2015.

The national debate that accompanied Ms. Maynard's plight focused the nation on the desire of patients with a terminal illness to determine for themselves - how and when they die. These patients, when mentally competent, should be afforded this right. Patients should not be forced to relocate to another state or to leave the country to control how their lives end. Patients seek to die with dignity, on their own terms,

typically in their own homes, surrounded by their family and other loved ones.

New Yorkers strongly support empowering terminally-ill, mentally competent patients to control their own death. A 2015 poll found that 77% of all New Yorkers support aid in dying, including 75% of Catholics, 72% of Republicans, 67% of self-identified Conservatives, and 78% of New Yorkers upstate.

Nationally, according to HealthDay/Harris poll findings released in December 2014, 74% of American adults believe that terminally ill patients in great pain should have the right to end their lives (14% were opposed). Gallup, which has been polling this issue since 1947, has found that a majority of Americans have supported aid in dying since 1973. Their most recent poll found 68% of Americans support aid in dying. Similar results were found in a recent survey of Americans by LifeWay Research (69% of those polled agree that physicians should be allowed to assist terminally ill patients in ending their life and 67% agree that it is morally acceptable for a person to ask for a physician's aid in taking his or her own life.)

Physicians also support aid in dying. In a recent survey conducted by Medscape, 54% of physicians in the U.S. believe that aid in dying should be permitted, while only 31% opposed it.

The Medical Aid in Dying Act will enable mentally competent, terminally ill patients to choose to self-administer medication to bring about a peaceful death. It also provides their physician, when acting in good faith in accordance with the provisions of the Act, protections from civil and criminal liability and professional disciplinary action.

Six states - Oregon, Vermont, Washington, California, Montana and Colorado allow physician assisted aid in dying. More than 65% of Colorado voters approved the ballot initiative this past November to provide for aid in dying. And last month the mayor of the District of Columbia signed a medical aid in dying act.

Aid in dying legislation recently passed the New Jersey Assembly, and legislators in 19 states, including all of New England, Maryland, North Carolina, Tennessee, Oklahoma, Utah, Wyoming and Missouri, have aid in dying bills pending.

Aid in dying legislation is supported by the American Public Health Association, the American Medical Women's Association, the American Medical Student Association, the American College of Legal Medicine, and Lambda Legal.

LEGISLATIVE HISTORY:

A.10059, 2016 reported referred to Codes.
Same as S.7579, 2016 referred to Health.