

NEW JERSEY'S AID IN DYING FOR THE TERMINALLY ILL ACT

On April 12, 2019, New Jersey Governor Phil Murphy signed the Aid in Dying for the Terminally Ill Act, P.L. 2019, c.59, to be codified as NJSA 26:16-1, et seq., (“Act”), making New Jersey the eighth jurisdiction in our nation (including the District of Columbia) to allow terminally ill patients to end their own lives in a humane and dignified manner. It’s commonly referred to as the “Right to Die Law” or “Death with Dignity Law.”

The Act went into existence on August 1, 2009. It allows adult New Jersey residents who have capacity and are determined to be terminally ill to request and self-administer medication to end their lives. In addition, the Act amends the current Aiding Suicide statute under the New Jersey Code of Criminal Justice to exclude any actions taken in accordance with the provisions of the Act.

Non-residents of New Jersey are *ineligible* to request medication under the Act, even if they travel to the state to receive care. Proof of residence (e.g., a NJ’s driver’s license or resident NJ income tax return) must be provided to the patient’s attending physician.

The Act provides a defined and safeguarded process in assisting a capable, terminally ill patient with the request to end his or her life, while serving as a guide to health care providers and patient advocates who support dying patients, protecting vulnerable adults from abuse, and ensuring that the process is entirely voluntary on the part of the patient and health care providers.

To obtain the medication, a patient's attending physician must determine that the patient:

- (1) has an irreversibly fatal illness with a life expectancy of less than six (6) months;
- (2) has the capacity to make health care decision and communicate them to a health care provider; and
- (3) is voluntarily requesting the medication.

Patients are required to make two (2) oral requests to the physician at least fifteen (15) days apart and one (1) written request for the medication, which can be submitted at any time after the first oral request. Written requests must be signed by the patient and at least two (2) witnesses, one of whom cannot be a relative, an heir of the patient's estate, or an owner or employee of a health care facility where the patient is receiving care. Patients who submit a request can revoke it at any time. Only patients can request the medication, but a guardian or health care representative can submit the request for medication *on behalf* of the patient if simply communicating the patient's health care decisions to the attending physician at the patient's request.

Upon receiving the oral and written requests, the physician is required to consult with a second physician and advise the patient of risks and alternatives to the medication, as well as refer the patient to counseling, when appropriate.

The burden of the Act is largely on the patient's attending physician, who has primary responsibility for treating the patient and is presumably most familiar with the patient, his or her terminal condition and family circumstances. The attending physician is required to maintain extensive records, including documentation of the patient's requests for medication, records regarding the patient's diagnosis, prognosis, capacity and voluntariness in submitting such requests, as well as records from the consulting physician and any mental health care professionals involved with the patient's request for the medication. The patient's attending and/or consulting physician is responsible for confirming the patient's capacity.

Before the attending physician can write a prescription for the medication under the Act, the physician must ensure that all of the appropriate procedures under the Act have been taken. The attending physician is responsible for informing the patient of the potential risks in taking such medication, the probable outcome, and any feasible alternatives to taking the medication, including other treatment options and palliative care. Furthermore, the attending physician is responsible for advising the patient to notify his or her next-of-kin (if any) about the request. If appropriate, the attending physician may need to refer the patient to counseling with a mental health professional.

Moreover, the attending physician must advise the patient to have someone present if and when the patient chooses to self-administer the medication, and the patient cannot take the medication in a public place.

If all of this sounds very complex or like something to delay the process, it's because of the solemn nature of what's being attempted. Patients are looking to end their pain and suffering, to die with dignity before they lose their physical and mental capacities. This way, they will have a chance to say goodbye to loved ones, to arrange for donation of organs if possible, and ease the financial and emotional burden on family.

Yes, the Act permits terminally ill patients who are New Jersey residents to end their own lives, but that doesn't require everyone to choose this route. That's what the Act is about: having the choice on how you want to live and how you want to die. It's your choice to make.

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