

**MMA Legislative Update:
129th Maine Legislature, First Regular Session**

**L.D. 1313, *An Act to Enact the Maine Death
with Dignity Act***

July 2019

Disclosure

- I have no financial interest in the topic of this presentation & no actual or potential conflict of interest to disclose
- I am an employee of the Maine Medical Association, a professional organization representing more than 4300 physicians, residents, & medical students in Maine whose mission is to support Maine physicians, advance the quality of medicine in Maine, and promote the health of all Maine citizens

Physician-Assisted Death (PAD)

- L.D. 1313, *An Act to Enact the Maine Death with Dignity Act*, P.L. 2019, Chapter 271:
<http://www.legislature.maine.gov/LawMakerWeb/summary.asp?ID=280072574>
 - MMA testimony “neither for nor against:”
https://www.mainemed.com/sites/default/files/content/testimony/ld1313_testimony.pdf
 - HHS Committee vote: 7-6 OTP-Am
 - House vote on enactment: 73-72
 - Senate vote on enactment: 19-16
 - Governor Mills signed 6/12/19; Executive Order 9
 - Effective 90 days after adjournment

Evolution of MMA Position on PAD

- Resolution in opposition adopted 9/9/00 during unsuccessful ballot initiative
- Maine legislature considered bills every 2 years thereafter
- MMA testified “neither for nor against” two bills in 128th Legislature on 4/5/17; MMA Board establishes ad hoc committee chaired by Immediate Past President Charles Pattavina, M.D. to develop new policy statement
- Series of polls from 2016-2018 show members are evenly divided on the issue
- Revised MMA Statement of Physician-Assisted Suicide adopted by Board on 4/25/19:
[https://www.mainemed.com/sites/default/files/content/Statement on Physician-Assisted Suicide Final%204-25-19.pdf](https://www.mainemed.com/sites/default/files/content/Statement_on_Physician-Assisted_Suicide_Final%204-25-19.pdf)
 - Takes no position

P.L. 2019, Chapter 271 Overview

- Enacted text:

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0948&item=3&snum=129>

- Key definitions

- **Attending physician:** primary responsibility for care/treatment of terminal disease
- **Competent:** ability to make & communicate informed decision; determined by court, attending physician, consulting physician, psychiatrist, or psychologist
- **Consulting physician:** physician qualified by specialty or experience to make professional diagnosis & prognosis of patient's disease

Key Definitions

- **Informed decision:** qualified patient requests & obtains prescription for medication to end life which may be self-administered (according to common “informed consent” legal & ethical standards)
- **Physician:** M.D. or D.O.
- **Qualified patient:** competent, adult, Maine resident (no specific waiting period), meets requirements of Act
- **Self-administer:** “voluntarily ingest medication”
- **Terminal disease:** “incurable & irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within 6 months”
- **Medically confirmed:** consulting physician confirms opinion of attending physician upon physical examination & review of medical records

Written request

- Qualified patient's principal right under Act is to make "written request" for medication
- Must follow substantially, statutory form
- Must be signed & dated by qualified patient
- Must be witnessed by at least 2 individuals
- Note language/interpreter aspects
- At least 1 witness & any interpreter must NOT be:
 - Relative of patient by blood, marriage, or adoption
 - Person entitled to any portion of estate
 - Owner, operator, or employee of health care facility where patient is receiving care
- Attending physician may not be a witness

Written & oral requests

- Qualified patient must make initial oral request
- Qualified patient must make written request & 2nd oral request at least 15 days after initial oral request
- Qualified patient may rescind request at any time & in any manner without regard to mental state; attending physician must offer opportunity to rescind
- Attending physician must wait 48 hours after written request to write prescription

Attending physician responsibilities

- Make initial determinations
 - Patient has terminal disease
 - Patient is competent
 - Patient has made written request voluntarily
- Request that patient demonstrate residency
- Obtain informed consent
- Refer patient to consulting physician for medical confirmation
- Meet alone with patient (with interpreter, if necessary) to confirm lack of coercion or undue influence
- Refer patient for counseling, if appropriate
- Recommend that patient notify next of kin

Attending physician responsibilities

- Counsel patient to have another person present when taking medication & not to take it in a public place
- Inform patient of the right to rescind the request
- Verify, immediately before writing prescription, that patient is making informed decision
- Fulfill medical record documentation requirements
- Ensure all appropriate steps taken under Act
- Dispense medications directly or contact pharmacy

Other requirements

- Attending or consulting physician who believes patient may be suffering from psychiatric or psychological disorder or depression causing impaired judgment shall refer patient for counseling

Other requirements

- Medical record documentation requirements
 - All oral requests by patient
 - All written requests
 - Attending physician's diagnosis, prognosis, & determination that patient is competent, acting voluntarily, & acting upon informed consent
 - Same for consulting physician
 - Counseling report, if any
 - Attending physician's offer to rescind
 - Attending physician's note that all requirements of Act are met & specific medication(s) prescribed

Is physician participation required?

- **No.** Nothing in the Act requires a physician to participate
- If a health care provider (individual or facility) is unable or unwilling to fulfill a qualified patient's requests under the Act, the provider must transfer all relevant records to a new provider upon request

DHHS role

- Adopt rules within 6 months of effective date
- Require participating providers to file copy of prescription or dispensing record, along with other documentation requested
- Compile for public view an annual statistical report & file the report with the HHS Committee of the legislature by March 1st annually
- Enacted law does not address medical certification of cause of death on the death certificate; presume rulemaking will address this
- State reports may not use terms “suicide” or “assisted suicide”

Other provisions of the Act

- Effect on construction of wills, contracts, & other agreements
- Effect on construction of insurance or annuity policies
- Does not authorize euthanasia
- Does not lower standard of care
- Basis for prohibiting persons or entities from participating under the Act

Questions?

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