SENATE DOCKET, NO. 395 FILED ON: 1/14/2019

SENATE . . . . . No. 1208

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to end of life options.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
William N. Brownsberger	*Second Suffolk and Middlesex*	
Louis L. Kafka	*8th Norfolk*	
Harriette L. Chandler	*First Worcester*	
Brian M. Ashe	*2nd Hampden*	
John Barrett, III	*1st Berkshire*	
Natalie M. Blais	*1st Franklin*	
Daniel R. Carey	*2nd Hampshire*	
Michelle L. Ciccolo	*15th Middlesex*	
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	
Mindy Domb	*3rd Hampshire*	
Daniel M. Donahue	*16th Worcester*	
Paul R. Feeney	*Bristol and Norfolk*	
Carlos González	*10th Hampden*	
Eric P. Lesser	*First Hampden and Hampshire*	
Joan B. Lovely	*Second Essex*	
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	
Maria Duaime Robinson	*6th Middlesex*	
Lindsay N. Sabadosa	*1st Hampshire*	

James T. Welch	*Hampden*	
Jack Patrick Lewis	*7th Middlesex*	*1/16/2019*
Tami L. Gouveia	*14th Middlesex*	*1/17/2019*
Jason M. Lewis	*Fifth Middlesex*	*1/25/2019*
Lori A. Ehrlich	*8th Essex*	*1/25/2019*
Mike Connolly	*26th Middlesex*	*1/31/2019*
Adam G. Hinds	*Berkshire, Hampshire, Franklin and Hampden*	*1/31/2019*
Cindy F. Friedman	*Fourth Middlesex*	*1/31/2019*
James B. Eldridge	*Middlesex and Worcester*	*2/1/2019*
Patricia D. Jehlen	*Second Middlesex*	*2/1/2019*
Michael J. Barrett	*Third Middlesex*	*2/1/2019*
James K. Hawkins	*2nd Bristol*	*2/7/2019*
Kenneth I. Gordon	*21st Middlesex*	*2/25/2019*
Brendan P. Crighton	*Third Essex*	*2/25/2019*
Lenny Mirra	*2nd Essex*	*3/14/2019*
Joseph A. Boncore	*First Suffolk and Middlesex*	*3/14/2019*
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*	*4/2/2019*
Edward J. Kennedy	*First Middlesex*	*4/23/2019*
David Henry Argosky LeBoeuf	*17th Worcester*	*6/11/2019*

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SENATE . . . . . No. 1208

By Mr. Brownsberger, a 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. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1225* OF 2017-2018.]

The Commonwealth of Massachusetts

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:

Section 1: The General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after Chapter 201F the following new chapter:-

CHAPTER 201G

MASSACHUSETTS END OF LIFE OPTIONS ACT

Section 1. Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Adult" means an individual who is 18 years of age or older.

"Aid in Dying" means the medical practice of a physician prescribing lawful medication to a qualified patient, which the patient may choose to self-administer to bring about a peaceful death.

"Attending physician" means the physician who has primary responsibility for the care of a terminally ill patient.

"Capable" means having the capacity to make informed, complex health care decisions; understand the consequences of those decisions; and to communicate them to health care providers, including communication through individuals familiar with the patient's manner of communicating if those individuals are available.

"Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a terminally ill patient's condition.

"Counseling" means one or more consultations as necessary between a licensed mental health professional and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. A licensed mental health professional that is part of interdisciplinary team defined in 105 CMR 141.203, for a patient receiving hospice care, may provide the necessary consultations, provided that a consultation occurs after the patient has made the oral request.

"Guardian" means an individual who has qualified as a guardian of an incapacitated person pursuant to court appointment and includes a limited guardian, special guardian and temporary guardian, but excludes one who is merely a Guardian ad litem (as defined in Chapter 190B, Article V, Section 5-101). Guardianship does not include a Health Care Proxy (as defined by Chapter 201D of the Massachusetts General Laws).

"Health care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.

"Incapacitated person" means an individual who for reasons other than advanced age or minor, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance. This term shall follow as described by Chapter 190B, Article V, Section 5-101.

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

(a) The patient's medical diagnosis;

(b) The patient's prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

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

(e) The feasible alternatives or additional treatment opportunities, including but not limited to palliative care as defined in Ch. 111 § 227.

"Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

"Medication" means aid in dying medication.

"Palliative care" means a health care treatment as defined in Ch. 111 § 227, including interdisciplinary end-of-life care and consultation with patients and family members, to prevent or relieve pain and suffering and to enhance the patient's quality of life, including hospice."

"Patient" means an individual who has received health care services from a health care provider for treatment of a medical condition.

"Physician" means a doctor of medicine or osteopathy licensed to practice medicine in Massachusetts by the board of registration in medicine.

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

"Resident" means an individual who demonstrates residency in Massachusetts by presenting one form of identification which may include but is not limited to:

(a) Possession of a Massachusetts driver's license;

(b) Proof of registration to vote in Massachusetts;

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

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

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

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

(g) A Medicaid or Medicare benefit statement; or

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

"Self-administer" means a qualified patient's act of ingesting medication obtained pursuant to this chapter.

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

Section 2. Terminally ill patient's right to request aid in dying and obtain prescription for medication pursuant to this chapter.

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

(a) is a capable adult;

(b) is a resident of Massachusetts; and

(c) has been determined by the patient's attending physician to be terminally ill.

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

(a) has met the requirements in part (1) of this section;

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

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

(d) has had no less than fifteen days pass after making the oral request.

(3) A patient may not qualify under this chapter if the patient has a guardian.

(4) A patient may not qualify under this chapter solely because of age or disability.

Section 3. Oral and Written Requests.

(1) A patient wishing to receive a prescription for medication pursuant to this chapter shall make an oral request to the patient's attending physician. No less than fifteen days after making said request the patient will submit a written request to the patient's attending physician in substantially the form set in Section 4.

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

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

(b) acting voluntarily; and

(c) not being coerced to sign the request.

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

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

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

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

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

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

Section 4. Form of Written Request and Witness Declaration.

REQUEST FOR AID IN DYING MEDICATION PURSUANT TO THE MASSACHUSETS END OF LIFE OPTIONS ACT

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

I have been fully informed of my diagnosis, prognosis, the nature of the aid in dying medication to be prescribed and potential associated risks, the expected result, and the feasible

alternatives and additional treatment opportunities, including comfort care, hospice care, and pain control.

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

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

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

DECLARATION OF WITNESSES

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

Printed Name of Witness 1: . . . . . .

Signature of Witness l/Date:. . . . . .

Printed Name of Witness 2:. . . . . .

Signature of Witness 2/Date:. . . . . .

Section 5. Right to rescind request -- requirement to offer opportunity to rescind.

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

(2) A prescription for medication pursuant to this chapter may not be written without the attending physician offering the qualified patient an opportunity to rescind the request for medication.

Section 6. Attending physician responsibilities.

(1) The attending physician shall:

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

(i) is a resident of this state;

(ii) is terminally ill;

(iii) is capable; and

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

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

(i) a patient’s medical diagnosis;

(ii) a patient’s prognosis;

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

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

(v) the feasible alternatives and additional treatment opportunities, including but not limited to palliative care as defined in Ch. 111 § 227.

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

(d) refer the patient for counseling pursuant to section 8;

(e) recommend that the patient notify the patient's next of kin;

(f) counsel the patient about the importance of:

(i) having another individual present when the patient takes the medication prescribed pursuant to this chapter; and

(ii) not taking the medication in a public place;

(h) inform the patient that the patient may rescind the request for medication at any time and in any manner;

(i) verify, immediately prior to writing the prescription for medication, that the patient is making an informed decision;

(j) fulfill the medical record documentation requirements of section 13;

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

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

(ii) with the qualified patient's written consent:

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

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

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

Section 7. Consulting physician confirmation.

(1) Before a patient may be considered a qualified patient under this chapter the consulting physician shall:

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

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

(c) verify that the patient:

(i) is capable;

(ii) is acting voluntarily; and

(iii) has made an informed decision.

Section 8. Counseling referral.

(1) An attending physician shall refer a patient, who has requested medication under this chapter, to counseling to determine that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. The licensed mental health professional must submit a final written report to the prescribing physician.

(2) The medication may not be prescribed until the individual performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

Section 9. Informed decision required.

A qualified patient may not receive a prescription for medication pursuant to this chapter unless the patient has made an informed decision as defined in section 1. Immediately before writing a prescription for medication under this chapter the attending physician shall verify that the qualified patient is making an informed decision.

Section 10. Family notification recommended -- not required.

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

Section 11. Medical record documentation requirements.

The following items must be documented or filed in the patient's medical record:

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

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

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

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

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

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

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

(8) a note by the attending physician indicating:

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

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

Section 12. Disposal of unused medications.

Any medication dispensed under this chapter that was not self-administered shall be disposed of by lawful means.

Section 13. Data Collection.

Physicians are required to keep a record of the number of requests; number of prescriptions written; number of requests rescinded; and the number of qualified patients that took the medication under this chapter. This data shall be reported to the Department of Public Health annually, which will subsequently be made available to the public.

Section 14. Effect on wills, contracts, insurance, annuities, statutes and regulations.

(1) Any provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a patient may make or rescind a request for medication pursuant to this chapter, is not valid.

(2) A qualified patient's act of making or rescinding a request for aid in dying shall not: provide the sole basis for the appointment of a guardian or conservator.

(3) A qualified patient's act of self-administering medication obtained pursuant to this act shall not constitute suicide or have an effect upon any life, health, or accident insurance or annuity policy.

(4) Actions taken by health care providers and patient advocates supporting a qualified patient exercising his or her rights pursuant to this chapter, including being present when the patient self-administers medication, shall not for any purpose, constitute elder abuse, neglect, assisted suicide, mercy killing, or homicide under any civil or criminal law or for purposes of professional disciplinary action.

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

Section 15. Provider Participation.

(1) A health care provider may choose whether to voluntarily participate in providing to a qualified patient medication pursuant to this act and is not under any duty, whether by contract, by statute, or by any other legal requirement, to participate in providing a qualified patient with the medication.

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

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

(4) (a) Health care providers shall maintain and disclose to consumers upon request their written policies outlining the extent to which they refuse to participate in providing to a qualified patient any medication pursuant to this act.

(b) The required consumer disclosure shall at minimum:

(i) include information about the Massachusetts End of Life Options Act;

(ii) identify the specific services in which they refuse to participate;

(iii) clarify any difference between institution-wide objections and those that may be raised by individual licensed providers who are employed or work on contract with the provider;

(iv) describe the mechanism the provider will use to provide patients a referral to another provider or provider in the provider's service area who is willing to perform the specific health care service;

(v) describe the provider's policies and procedures relating to transferring patients to other providers who will implement the health care decision; and

(vi) inform consumers that the cost of transferring records will be borne by the transferring provider.

(c) The consumer disclosure shall be provided:

(i) to any individual upon the request;

Section 16. Liabilities.

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

(2) An individual who coerces or exerts undue influence on a patient to request medication to end the patient's life, or to destroy a rescission of a request, shall be guilty of a felony punishable by imprisonment in the state prison for not more than three years or in the house of correction for not more than two and one-half years or by a fine of not more than one thousand dollars or by both such fine and imprisonment.

(3) Nothing in this act limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any individual.

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

Section 17. Claims by governmental entity for costs incurred.

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

Section 18. Construction.

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

Section 19. Severability.

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