

Memorandum in Support

January 31, 2024

A. 995-A

By: M. of A. Paulin

S. 2445-A

By: Senator Hoylman-Sigal

Senate Committee: Health

Assembly Committee: Health

Effective Date: Immediately

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 (MAID)

LAW AND SECTIONS REFERRED TO: Adding Article 28-F to the Public Health Law

This bill would allow a terminally ill adult with decision making capacity to request and receive from their physician a prescription for medication that they can take at a time of their own choosing to bring about a peaceful death. It is modeled after legislation in Oregon, 9 other states, and Washington D. C., where medical aid in dying has been authorized.

The New York State Bar Association formed a Task Force on Medical Aid in Dying to study this issue thoroughly and put together a report on their findings. The task force spent time reviewing the legal, ethical, public health and policy considerations, while also evaluating the impact on families, healthcare providers, nursing homes and correctional facilities, ultimately presenting several recommendations including support for this legislation.¹ This report was approved and adopted by NYSBA at the January 2024 House of Delegates meeting.

One of the biggest ethical questions that arises with MAID is whether legalization will lead to abuse and/or coercion. The attached report expresses that there have been no reports to the authors' knowledge of abuse or coercion in a relational or interactional context involving a person or agent being coerced by another person or agent who is doing the coercing.

To further ensure prevention of abuse and/or coercion, there are a number of safeguards in the legislation:

- A qualified patient must have a medically confirmed terminal illness that is incurable and irreversible and will likely cause death within 6 months.
- Two physicians must confirm that the person is terminally ill with a prognosis of 6 months or less to live, is making an informed health care decision and is not being coerced.

¹See Report and Recommendations of the New York State Bar Association Task Force on Medical Aid in Dying, January 2024, pgs. 32-39, (attached, and available at [House of Delegates - New York State Bar Association \(nysba.org\)](http://www.nysba.org))

- The attending physician must inform the requesting individual about all of their end-of-life care options, including palliative care and hospice.
- There is a mandatory mental health evaluation if either physician has concerns about the person's mental capacity to make their own healthcare decisions and the mental health provider must confirm in writing the dying person's capacity before a prescription can be written.
- The individual must make an oral and written request for aid-in-dying medication, witnessed by two people – neither of whom can be a relative or someone who stands to benefit from the person's estate.
- The terminally ill person can withdraw their request for aid-in-dying medication, not take the medication once they have it, or otherwise change their mind at any point in time.
- The individual must be able to self-ingest the medication.
- No physician, health provider or pharmacist is required to participate in medical aid in dying and those who do and comply with all aspects of the law receive civil and criminal immunity.
- Anyone attempting to coerce a patient will be subject to criminal prosecution.
- Unused medication must be disposed of as required by state and federal laws.

Data show that the majority of eligible patients involve their family in their decision-making process and most patients have someone present at some point during their planned death, which sometimes may help to mitigate families' grieving, according to Oregon data.

As the U.S. Supreme Court and the New York Court of Appeals have not recognized MAID as a fundamental liberty interest, legislation is the available pathway to legalize MAID. This legislation offers both dignity and compassion for those experiencing a terminal illness and grappling with what can be an extremely difficult time in their lives, while also putting a number of safeguards in place to ensure prevention of abuse and/or coercion.

For the above reasons and the attached report, the New York State Bar Association **SUPPORTS** this legislation.