



NEW YORK STATE BAR ASSOCIATION

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The Honorable Kathy Hochul

Governor of the State of New York

Executive Chamber

State Capitol

Albany, New York 12224

Re: Support for Medical Aid in Dying (MAID) -- A.136 (Paulin)/S.138 (Hoylman-Sigal)

Dear Governor Hochul,

As you know, the New York State Bar Association strongly supports A.136 (Paulin)/S.138 (Hoylman-Sigal), which would enact a New York Medical Aid in Dying (“MAID”) statute. Recent press reports indicate that your office and the Legislature are considering potential chapter amendments to that legislation. As drafted, MAID represents one of the most cautious and restrictive end-of-life statutes in the country.

The New York State Bar Association’s MAID Task Force -- comprised of NYSBA leaders with expertise in ethics; disability rights; elder law; health and public health law; insurance law; palliative care, hospice, and end-of-life care -- spent months researching end-of-life statutes across the country. We heard testimony from diverse parties, including individuals, organizations, attorneys, physicians, social workers, and other professionals; both supporters and opponents of the bill. Based on this rigorous, objective and deliberative work, NYSBA is confident that the legislation accounts for the significant ethical considerations that medical aid in dying presents and has been well crafted to prevent abuse and/or coercion. For these reasons, we urge adoption of the MAID legislation as drafted. We respectfully recommend that certain amendments summarized in the press should not be incorporated.

Video recorded Message

Of the eleven jurisdictions that have legalized MAID, none require a recorded message of a patient’s intention to end their life. Adding such a provision would undoubtedly chill a patient’s

ability to exercise the rights afforded under the statute. Such an additional burden on the patient would be unwarranted and would add an emotional burden to families.

The legislation as passed by both houses already requires/incorporates the following protections:

- To be a qualified patient, the individual must have a medically confirmed, incurable, irreversible terminal illness with a prognosis of 6 months or less to live.
- Two physicians must confirm the diagnosis and that the person is making an informed health care decision without coercion.
- The attending physician must fully inform the patient about end-of-life care options, including palliative care and hospice.
- If either physician has concerns about the person's mental capacity to make their own healthcare decisions, a mental health evaluation will be required, and the mental health provider must confirm 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 may be a relative or someone who stands to benefit from the person's estate.
- The terminally ill person may withdraw their request for aid-in-dying medication, not take the medication once they have it, or otherwise change their mind, at any time.
- The individual must be able to self-ingest the medication.
- Participation by physicians, health providers, and pharmacists is voluntary, and those who comply with the law are granted civil and criminal immunity.
- Anyone attempting to coerce a patient to access MAID will be subject to criminal prosecution.
- Unused medication must be disposed of in accordance with state and federal laws.

No further protections are needed and adding the requirement of a recorded message would be more harmful than helpful.

Waiting Periods

Waiting periods are similarly unnecessary and chilling. They would serve no benefit in New York. As the NYSBA Task Force on MAID identified in its report- among the jurisdictions with MAID-like statutes- the “[t]he trend is to reduce or eliminate the waiting period,” not create new ones.¹ Specifically, over the last six years, Oregon, California, Vermont, New Mexico, Washington, and Hawaii, all amended their statutes to either shorten, eliminate, or create a waiver process to override any pre-existing waiting requirements.²

¹ Report and Recommendations of the New York State Bar Association Task Force on Medical Aid in Dying, January 2024, pgs. 25-26; 2024-January-HOD-Approved-Report-on-Medical-Aid-in-Dying-MAID.pdf

² *Id.*

Residency Requirements

Similarly, the trend is to *eliminate* residency requirements, in large part due to legal challenges to such provisions on U.S. constitutional grounds.³ In 2023, to obviate the legal challenge, Oregon and Vermont amended their MAID laws to remove residency requirements. A legal challenge to the New Jersey residency requirement is currently pending in federal court.⁴ It would be incongruous for New York to include such a requirement.

As we have previously shared, the Task Force considered this issue with solemn respect for patients, families and caregivers and found no evidence of abuse or coercion in those jurisdictions that have already implemented similar statutes. The proposed New York legislation safeguards patient autonomy and creates a higher level of comfort and confidence that end-of-life decisions are made with compassion and strict protection. There is no need to add burdensome limitations on patients and families already experiencing great suffering.

We offer these thoughts in the spirit of sincere, constructive and respectful guidance and with the goal of implementing MAID in New York. I, and the entire NYSBA team, remain available to discuss with you or your staff.

Respectfully,



Kathleen M. Sweet
President

Cc: Senator Brad Hoylman Sigal
Assembly Member Amy Paulin

³ *Id.* at 21

⁴ https://compassionandchoices.org/wp-content/uploads/2024/04/0001-complaint-2023-08-29-govatos-et-al-v-murphy-et-al_wm.pdf