

To OLS

This is a draft that will need your wonderful skills.

First, I am not sure about including a preamble, and would seek your counsel.

Second, RSA 137-J deals with end of life options and I would think this should be coordinated with that, including definitions.

I've tried to provide as much information as possible, but I have no confidence that the format is correct.

Please let me know what else you need from me.

Thank you,

Marjorie Smith

**Preamble:**

New Hampshire has long recognized that mentally capable adults have a fundamental right to be informed about their full range of medical treatment options and make their medical decisions in accordance with their own values, beliefs, and personal preferences, and in consultation with their health care providers and loved ones; and

New Hampshire values the highest standard of medical care and the full range of health care options for each individual, including at life's end; and

Terminally ill individuals may undergo unremitting pain, agonizing discomfort, or a sudden, continuing, and irreversible reduction in their quality of life when nearing death; and

The availability of medical assistance in dying with the support of health care providers offers an additional palliative care option for terminally ill individuals seeking to retain as much autonomy and freedom to make their own health care decisions as they can, and to preempt or ease unnecessary pain and suffering as they approach death; and

Integration of medical assistance in dying into standard end-of-life care options has contributed to better conversations about end of life between patients and their loved ones, between health care providers and their patients, and has encouraged earlier and more appropriate enrollment into hospice care; and

New Hampshire seeks to affirm that a health care provider who respects and honors terminally ill individuals' values and priorities for their last days of life and prescribes or dispenses medications for any such qualified terminally ill individual who makes a request pursuant to this Act is practicing lawful patient-directed care; and

Patient-directed care is respectful of and responsive to individual patient's decisions, preferences, needs; it

also ensures that patient values direct all clinical decisions and that patients are fully informed of and able to access the legal medical options they desire.

Therefore, be it enacted by the General Court of the State of New Hampshire:

## Section 1. End of Life Options

### Section 2. DEFINITIONS:

As used in the Act, unless the context otherwise requires, the following definitions shall apply:

- A. "Adult" means an individual 18 years of age or older.
- B. "Mental capability" means an individual's ability to understand and appreciate health care options available to that individual, including significant benefits and risks, and to make and communicate an informed health care decision. A determination of capacity shall be made only according to professional standards of care and the provisions of (NH statute).
- C. "Health care entity" means an entity or institution, other than an individual, that is licensed to provide any form of health care in the state, including a hospital, clinic, hospice agency, home health agency, long-term care facility, pharmacy, group medical practice, or any similar entity.
- D. "Health care provider" means any of the following individuals authorized pursuant to the (NH statute) to prescribe medications to be used in medical assistance in dying:
  - 1) physician licensed pursuant to the (NH statute);
  - 2) an osteopathic physician licensed pursuant to the (NH statute);
  - 3) a nurse licensed in advanced practice pursuant to the (NH statute); or
  - 4) a physician assistant licensed pursuant to the (NH statute re PA and osteopaths);
- E. "Informed decision" means a decision by a mentally capable individual to request and obtain a prescription for medications pursuant to this Act, that the qualified individual may self-administer to bring about a peaceful death, after being fully informed by the prescribing provider and consulting provider of:
  - 1) The individual's diagnosis and prognosis;
  - 2) The potential risk associated with taking the medications to be prescribed;
  - 3) The probable result of taking the medications to be prescribed;
  - 4) The feasible end-of-life care and treatment options for the individual's terminal condition, including but not limited to comfort care, palliative care, hospice care, and pain control, and the risks and benefits of each; and
  - 5) The individual's right to withdraw a request pursuant this Act, or consent for any other

treatment, at any time.

- F. "Medical assistance in dying" means the practice wherein a health care provider evaluates a request, determines qualification, performs the duties described in Sections 7 and 8 of this Act, and prescribes medications to a qualified individual who may self-administer the medications to bring about a peaceful death.
- G. "Mental health professional" means a state-licensed psychiatrist, psychologist, master social worker, psychiatric nurse practitioner or professional clinical mental health counselor.
- H. "Prescribing health care provider" means a health care provider who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the individual's disease, and prescribes medical assistance-in-dying medication.
- I. "Consulting health care provider" means a health care provider who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the individual's disease.
- J. "Qualified individual" means an individual who has met the requirements of Section X of the Act;
- K. "Self-administer" means taking an affirmative, conscious, voluntary action to take the prescribed medications;
- L. "Terminal" means a condition that is incurable and irreversible and will result in death.
- M. "Prognosis of six months or less" means the terminal condition will, within reasonable medical judgment, result in death within six months.

### SECTION 3. PRESCRIBING HEALTH CARE PROVIDER DETERMINATION; PATIENT FORM

A prescribing health care provider may provide a prescription for medical-assistance-in-dying medications to an individual only after the prescribing health care provider has:

- A. Determined that the individual has:
  - 1) mental capability;
  - 2) a terminal condition;
  - 3) prognosis of 6 months or less - (hospice eligible)
  - 4) voluntarily made the request for medical assistance in dying; and
  - 5) the ability to self-administer the medical assistance in dying medications.
- B. Determined that the individual is making an informed decision after discussing with the individual the:
  - 1) individual's medical diagnosis and prognosis;
  - 2) potential risks associated with self-administering the medical assistance in dying medications that the individual has requested the health care provider to prescribe;
  - 3) probable result of self-administering the medical assistance in dying medications to be prescribed;
  - 4) individual's option of choosing to obtain the medical-assistance-in-dying medications and then deciding not to use them; and
  - 5) feasible alternatives, including condition-directed treatment options, as well as hospice care and palliative care focused on relieving symptoms and reducing suffering;

- C. Determined in good faith that the individual's request does not arise from coercion or undue influence by another person, institution, or other party;
- D. Noted in the individual's health record the prescribing health care provider's determination that the individual qualifies to receive medical assistance in dying;
- E. Confirmed and recorded in the individual's health record that at least one physician, osteopathic physician, advanced practice registered nurse, or physician assistant licensed pursuant to the (cite NH statute) has determined, after conducting an appropriate examination, that the individual has capacity, a terminal condition, and the ability to self-administer the medical assistance-in-dying medications. That person may be the prescribing health care provider pursuant to this section, the individual's hospice health care provider or another health care provider who meets the requirements of this subsection;
- F. Affirmed that the individual is either:
  - 1) Enrolled in a Medicare-certified hospice program; or
  - 2) Eligible to receive medical assistance in dying after the prescribing health care provider has referred the individual to a consulting health care provider.
  - 3) And that the consulting health care provider has:
    - i. examined the individual;
    - ii. reviewed the individual's relevant medical records; and
    - iii. confirmed, in writing, the prescribing health care provider's determination that the individual is suffering from a terminal illness, meets the requirements for capacity and self-administration, and is making an informed decision, pursuant to this Act.
- G. Provided substantially the following form to the individual and enters the form into the individual's health record after the form has been completed with all of the required signatures and initials:

**"REQUEST FOR MEDICATIONS TO END MY LIFE IN A PEACEFUL MANNER**

I, (patient name) , am an adult of sound mind. I am suffering from a terminal condition that is incurable and irreversible and that, according to reasonable medical judgment, will result in my death within six months. My health care provider has determined that the condition is in its terminal phase. (Patient Initials)

I have been fully informed of my diagnosis and prognosis, the nature of the medical-assistance-in-dying medications to be prescribed and the potential associated risks, the expected result, as well as feasible alternative, concurrent, or additional treatment opportunities, including hospice care and palliative care focused on relieving symptoms and reducing suffering. (Patient Initials)

I request that my health care provider prescribe medications that will end my life in a peaceful manner if I choose to self-administer the medications, and I authorize my health care provider to contact a willing pharmacist to fulfill this request. (Patient Initials)

I further understand that although most deaths occur within three hours, my death may take longer. My health care provider has counseled me about this possibility.

I understand that I have the right to rescind this request at any time. (Patient Initials)

I understand the full import of this request, and I expect to die if I self-administer the medical assistance in dying medications prescribed. (Patient Initials)

I make this request voluntarily and without reservation.

Signed:

Date: Time:

**DECLARATION OF WITNESSES:**

We declare that the person signing this request:

1. is personally known to us or has provided proof of identity;
2. signed this request in our presence;
3. appears to be of sound mind and not under duress, fraud or undue influence; and
4. is not a patient for whom either of us is a health care provider.

Witness 1:

Witness 2:

Signature:

Printed Name:

Relationship to Patient:

Date:

**NOTE:** No more than one witness shall be a relative by blood, marriage or adoption of the person signing this request. No more than one witness shall own, operate or be employed at a health care facility where the person signing this request is a patient or resident.

**SECTION 4. STANDARD OF CARE:**

- A. Care that complies with the Act meets the medical standard of care.
- B. Nothing in this Act exempts a provider or other medical personnel from meeting medical standards of care for an individual's treatment that the individual is willing to accept.

**SECTION 5. DETERMINING MENTAL CAPABILITY:**

If either the attending provider or the consulting provider has doubts as to whether the individual is mentally capable and is unable to confirm that the individual is capable of making an informed decision, the attending provider or consulting provider shall refer the individual to a licensed mental health provider for determination regarding mental capability.

A. The licensed mental health provider who evaluates the individual under this Section shall submit to the requesting attending or consulting provider a written determination of whether the individual is mentally capable.

B. If the licensed mental health provider determines that the individual is not mentally capable, the individual shall not be deemed a qualified individual and the attending provider shall not prescribe medication to the individual under this Act.

**SECTION 6. WAITING PERIOD:**

A prescription for medical-assistance-in-dying medications shall:

- A. Not be filled until 48 hours after the prescription for medical assistance in dying medications has been written, unless the qualified individual's prescribing health care provider has medically confirmed that the qualified individual may, within reasonable medical judgment, die before the expiration of the waiting period identified herein, in which case, the prescription may be filled once the prescribing health care provider affirms that all requirements have been fulfilled pursuant to Section 3 of the Act; and
- B. Indicate the date and time that the prescription for medical assistance in dying medications was written and indicate the first allowable date and time when it may be filled.

**SECTION 7: ELIGIBILITY and DUE DILIGENCE**

- A. A mentally capable individual that meets the criteria in Section 3 of this Act is eligible to request a prescription for medications under this Act. The individual may make the requests in person or via Telehealth ( NH Revised Statutes Annotated, 167:4-d).
- B. The prescribing and consulting providers of an eligible individual shall have met all the requirements of Sections 3 and 7 of this Act.
- C. At the time of the second consultation, the consulting health care provider shall offer the individual an opportunity to rescind the request.
- D. Requests for medical assistance in dying may be made only by the eligible individual and shall not be made by the individual's surrogate decision-maker, health care proxy, attorney-in-fact for healthcare, nor via advance healthcare directive.
- E. If a requesting individual decides to transfer care to an alternative provider, the records custodian shall transfer all relevant medical records within two business days, including written documentation of the dates of the individual's request(s) concerning medical assistance in dying.

**SECTION 8: RIGHT TO KNOW:**

A health care provider shall inform a terminally ill patient of all reasonable options related to the patient's care that are legally available to terminally ill patients that meet the medical standards of care for end-of-life care.

**SECTION 9: IMMUNITIES and CONSCIENCE-BASED DECISIONS:**

- A. A person shall not be subject to criminal liability, civil liability, licensing sanctions or other professional disciplinary action for:
  - 1) participating in medical assistance in dying in good faith compliance with the provisions of the Act;
  - 2) being present when a qualified patient self-administers the prescribed medical assistance in dying medications to end the qualified individual's life in accordance with the provisions of this

Act;

- 3) refusing, for reasons of conscience, includes refusing to provide information on medical assistance in dying to a patient and refusing to refer a patient to any entity or individual who is able and willing to assist the patient in obtaining medical assistance in dying. A party who for reasons of conscience expects to refuse to participate in any part of the Act shall so inform the qualified individual at or before the time of their request.
- B. A health care entity, health insurer, managed care organization or health care provider shall not subject a person to censure, discipline, suspension, loss or denial of license, credential, privileges or membership or other penalty for participating, or refusing to participate, in the provision of medical assistance in dying in good faith compliance with the provisions of this Act.
  - C. No health care provider who objects for reasons of conscience to participating in the provision of medical assistance in dying shall be required to participate in the provision of assistance in dying under any circumstance. If a health care provider is unable or unwilling to carry out an individual's request pursuant to the Act, that health care provider shall so inform the individual at the time of the request and may refer the individual to a health care provider who is able and willing to carry out the individual's request or to another individual or entity to assist the requesting individual in seeking medical assistance in dying. The prior health care provider shall transfer, upon request, a copy of the individual's relevant medical records to the new health care provider.
  - D. A health care entity shall not forbid nor otherwise sanction a health care provider who provides medical assistance in dying in accordance with the Act off the premises of the health care entity or when the health care provider is not acting within the normal course and scope of the health care provider's employment with the health care entity.
  - E. A health care entity may sanction a health care provider for participating in medical assistance in dying on the premises of the prohibiting health care entity only if the health care entity has given written notice to the health care provider of the prohibiting entity's written policy forbidding participation in medical assistance in dying and the health care provider participates in medical assistance in dying:
    - 1) on the premises of the health care entity; or
    - 2) within the course and scope of the health care provider's employment for the health care entity.
  - F. Nothing in this section shall be construed to prevent:
    - 1) a health care provider from participating in medical assistance in dying while the health care provider is acting outside the health care entity's premises or outside the course and scope of the health care provider's capacity as an employee; or
    - 2) an individual who seeks medical assistance in dying from contracting with the individual's prescribing health care provider or consulting health care provider to act outside the course and scope of the provider's affiliation with the sanctioning health care entity.
  - G. Participating, or not participating, in medical assistance in dying shall not be the basis for a report of unprofessional conduct.
  - H. A health care entity that prohibits medical assistance in dying shall accurately and clearly articulate this in an appropriate location on any website maintained by the entity and in any appropriate materials given to patients to whom the health care entity provides health care.

**SECTION 10: PROHIBITED ACTS:**

- A. Nothing in the Act shall be construed to authorize a physician or any other person to end an individual's life by lethal injection, mercy killing, or euthanasia. Actions taken in accordance with this Act shall not be construed, for any purpose, to constitute suicide, assisted suicide, euthanasia, mercy killing, homicide, or adult abuse under the law.
- B. Notwithstanding any other law, a person shall not be subject to civil or criminal liability solely because the person was present when the qualified individual self-administers the prescribed assistance-in-dying drug. A person who is present may, without civil or criminal liability, or any discipline for professional licensees, assist the qualified individual by preparing the assistance-in-dying drug.
- C. Knowingly doing any of the following with the intent to cause, interfere with, or prevent a qualified individual's death against the qualified individual's wishes is a felony: (cite NH statute)
  - 1) Altering, forging, concealing, or destroying a request for a terminal prescription without the qualified individual's authorization.
  - 2) Concealing or destroying a withdrawal or rescission of a request for a terminal prescription without the qualified individual's authorization.
  - 3) Concealing or destroying a qualified individual's terminal prescription without the qualified individual's authorization, or preventing a qualified individual from self-administering the terminal prescription.
  - 4) Coercing or exerting undue influence on a qualified individual to request or to self-administer a terminal prescription for the purpose of ending the qualified individual's life.
  - 5) Coercing or exerting undue influence on a qualified individual to prevent the qualified individual from requesting or self-administering a terminal prescription.
- D. Nothing in this section limits civil liability nor damages arising from negligent conduct or intentional misconduct by the provider or healthcare entity.
- E. The penalties specified in this Act do not preclude criminal penalties applicable under other laws for conduct inconsistent with this Act.

**SECTION 11: REPORTING:**

- A. A health care provider who prescribes medical assistance in dying to a qualified individual in accordance with the provisions of this Act shall provide, in accordance with NH Department of Public Health rules, a report of that provider's participation. The department shall adopt and promulgate rules that establish the time frames and forms for reporting pursuant to this section and shall limit the reporting of data relating to qualified individuals who received prescriptions for medical assistance in dying medications to the following:
  - 1) the qualified individual's age at death;
  - 2) the qualified individual's race and ethnicity;
  - 3) the qualified individual's gender;
  - 4) whether the qualified individual was enrolled in hospice prior to or at the time of death;
  - 5) the qualified individual's underlying medical condition; and
  - 6) whether the qualified individual self-administered the medical assistance in dying medications and, if so, the date that this occurred.
- B. The department shall promulgate an annual statistical report, containing aggregated data, on the information collected pursuant to Subsection A of this section on the total number of medical assistance in dying medications prescriptions written statewide and on the number of health care providers who have issued prescriptions for medical assistance in dying medications during that year.



Data reported pursuant to this subsection shall not contain individually identifiable health information and are exempt from disclosure pursuant to the Inspection of Public Records Act.

C. As used in this section:

- 1) "health care provider" means an individual authorized pursuant to the Act to prescribe medical assistance in dying;
- 2) "medical assistance in dying" means the practice wherein a health care provider evaluates a request, determines qualification, performs the duties described in Sections 7 and 8 of this Act, and prescribes medications to a qualified individual who may self-administer the medications to bring about a peaceful death; and
- 3) "qualified individual" means an individual who has met the requirements to receive medical assistance in dying pursuant to the provisions of the Act.

**SECTION 12: EFFECT ON CONSTRUCTION OF WILLS, CONTRACTS, AND STATUTES:**

- A. No provision in a contract, will, or other agreement, whether written or oral, that would determine whether an individual may make or rescind a request pursuant to this Act is valid.
- B. No obligation owing under any currently existing contract shall be conditioned or affected by an individual's act of making or rescinding a request pursuant to this Act.
- C. It is unlawful for an insurer to deny or alter healthcare benefits otherwise available to an individual with a terminal disease based on the availability of medical assistance in dying or otherwise attempt to coerce an individual with a terminal disease to make a request for medical assistance-in-dying medications.

**SECTION 13: INSURANCE AND ANNUITY POLICIES:**

- A. The sale, procurement, or issuance of a life, health, or accident insurance; annuity policy; or the rate charged for a policy shall not be conditioned upon or affected by an individual's act of making or rescinding a request for medications pursuant to this Act.
- B. A qualified individual's act of self-administering medications pursuant to this Act does not invalidate any part of a life, health, or accident insurance, or annuity policy.
- C. An insurance plan, including medical assistance under the (NH Medical Assistance Act?), shall not deny or alter benefits to an individual with a terminal disease, who is a covered beneficiary of a health insurance plan, based on the availability of medical assistance in dying, his or her request for medications pursuant to this act, or the absence of a request for medications pursuant to this act. Failure to meet this requirement shall constitute a violation of [NH Insurance Code].

**SECTION 14. DEATH CERTIFICATE:**

- A. Unless otherwise prohibited by law, the prescribing provider may sign the death certificate of a qualified individual who obtained and self-administered a prescription for medications pursuant to this Act.
- B. When a death has occurred in accordance with this Act, the death shall be attributed to the underlying terminal disease.
- C. Death following self-administering medications under that Act alone does not constitute grounds for post-mortem inquiry.
- D. Death in accordance with this Act shall not be designated suicide or homicide.
- E. A qualified individual's act of self-administering medications prescribed pursuant to this Act shall not be indicated on the death certificate.

- F. A coroner may conduct a preliminary investigation to determine whether an individual received a prescription for medications under this Act.

**SECTION 15: SEVERABILITY:**

If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**SECTION 16: CODIFICATION INSTRUCTION:**

This Act is intended to be codified as an integral part of [cite NH code/statute and sections]

**SECTION 17: EFFECTIVE DATE:**

This Act is effective January 1, 2025