HOUSE DOCKET, NO. 2342 FILED ON: 1/19/2023

HOUSE . . . . . No. 2246

The Commonwealth of Massachusetts

PRESENTED BY:

James J. O'Day and Edward R. Philips

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:	DATE ADDED:
James J. O'Day	*14th Worcester*	*1/19/2023*
Edward R. Philips	*8th Norfolk*	*1/19/2023*
John Barrett, III	*1st Berkshire*	*1/19/2023*
Adam J. Scanlon	*14th Bristol*	*1/19/2023*
Jay D. Livingstone	*8th Suffolk*	*1/20/2023*
James C. Arena-DeRosa	*8th Middlesex*	*1/20/2023*
Jack Patrick Lewis	*7th Middlesex*	*1/20/2023*
Mindy Domb	*3rd Hampshire*	*1/21/2023*
Sean Garballey	*23rd Middlesex*	*1/21/2023*
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	*1/24/2023*
Kenneth I. Gordon	*21st Middlesex*	*1/24/2023*
William M. Straus	*10th Bristol*	*1/25/2023*
Daniel M. Donahue	*16th Worcester*	*1/25/2023*
Thomas M. Stanley	*9th Middlesex*	*1/25/2023*
Alice Hanlon Peisch	*14th Norfolk*	*1/25/2023*
Michelle L. Ciccolo	*15th Middlesex*	*1/26/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*1/26/2023*
Simon Cataldo	*14th Middlesex*	*1/26/2023*

Margaret R. Scarsdale	*1st Middlesex*	*1/26/2023*
Sally P. Kerans	*13th Essex*	*1/26/2023*
Susannah M. Whipps	*2nd Franklin*	*1/26/2023*
Michael J. Barrett	*Third Middlesex*	*1/26/2023*
Jessica Ann Giannino	*16th Suffolk*	*1/27/2023*
Carmine Lawrence Gentile	*13th Middlesex*	*2/1/2023*
Josh S. Cutler	*6th Plymouth*	*2/1/2023*
Christine P. Barber	*34th Middlesex*	*2/1/2023*
Jason M. Lewis	*Fifth Middlesex*	*2/1/2023*
Vanna Howard	*17th Middlesex*	*2/1/2023*
William C. Galvin	*6th Norfolk*	*2/1/2023*
David Paul Linsky	*5th Middlesex*	*2/1/2023*
Michael P. Kushmerek	*3rd Worcester*	*2/2/2023*
Steven Owens	*29th Middlesex*	*2/2/2023*
Patricia A. Duffy	*5th Hampden*	*2/2/2023*
David M. Rogers	*24th Middlesex*	*2/3/2023*
Brian M. Ashe	*2nd Hampden*	*2/3/2023*
Jennifer Balinsky Armini	*8th Essex*	*2/3/2023*
Adrian C. Madaro	*1st Suffolk*	*2/7/2023*
Jon Santiago	*9th Suffolk*	*2/7/2023*
Michelle M. DuBois	*10th Plymouth*	*2/8/2023*
Natalie M. Blais	*1st Franklin*	*2/8/2023*
Kay Khan	*11th Middlesex*	*2/9/2023*
Steven Ultrino	*33rd Middlesex*	*2/9/2023*
Christopher Hendricks	*11th Bristol*	*2/9/2023*
Patrick Joseph Kearney	*4th Plymouth*	*2/9/2023*
James B. Eldridge	*Middlesex and Worcester*	*2/9/2023*
Natalie M. Higgins	*4th Worcester*	*2/14/2023*
James Arciero	*2nd Middlesex*	*2/15/2023*
Peter Capano	*11th Essex*	*2/17/2023*
Carol A. Doherty	*3rd Bristol*	*2/20/2023*
Daniel R. Carey	*2nd Hampshire*	*2/21/2023*
Kate Lipper-Garabedian	*32nd Middlesex*	*2/22/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/22/2023*
Danillo A. Sena	*37th Middlesex*	*2/23/2023*
David Henry Argosky LeBoeuf	*17th Worcester*	*2/23/2023*
Christopher Richard Flanagan	*1st Barnstable*	*2/23/2023*
Dylan A. Fernandes	*Barnstable, Dukes and Nantucket*	*2/23/2023*
Samantha Montaño	*15th Suffolk*	*2/26/2023*

Tram T. Nguyen	*18th Essex*	*2/27/2023*
Shirley B. Arriaga	*8th Hampden*	*2/28/2023*
Paul R. Feeney	*Bristol and Norfolk*	*3/6/2023*
Tommy Vitolo	*15th Norfolk*	*3/30/2023*
Manny Cruz	*7th Essex*	*3/30/2023*
Dawne Shand	*1st Essex*	*3/31/2023*
Joan B. Lovely	*Second Essex*	*4/3/2023*
Patricia A. Haddad	*5th Bristol*	*4/5/2023*
Aaron L. Saunders	*7th Hampden*	*5/4/2023*
Andres X. Vargas	*3rd Essex*	*5/11/2023*
Smitty Pignatelli	*3rd Berkshire*	*5/12/2023*
Antonio F. D. Cabral	*13th Bristol*	*5/31/2023*
James K. Hawkins	*2nd Bristol*	*6/7/2023*
Danielle W. Gregoire	*4th Middlesex*	*7/10/2023*
Rodney M. Elliott	*16th Middlesex*	*7/27/2023*
Kate Donaghue	*19th Worcester*	*8/14/2023*
Kip A. Diggs	*2nd Barnstable*	*10/25/2023*
John Francis Moran	*9th Suffolk*	*12/19/2023*

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HOUSE . . . . . No. 2246

By Representatives O'Day of West Boylston and Philips of Sharon, a petition (accompanied by bill, House, No. 2246) of James J. O'Day, Edward R. Philips and others for legislation to authorize attending physicians to prescribe medical aid in dying medication that will end the life of patients in a peaceful manner. Public Health.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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:

The General Laws are hereby amended by inserting after Chapter 201F the following chapter:-

CHAPTER 201G

MASSACHUSETTS END OF LIFE OPTIONS ACT

Section 1. For the purposes of this chapter, the following terms shall have the following meanings unless the context clearly requires otherwise:

“Adult”, an individual who is 18 years of age or older.

“Attending physician”, a physician who has primary responsibility for the care of the patient and treatment of the patient’s terminal disease.

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

"Counseling", one or more consultations as necessary between a licensed mental health care 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.

"Guardian", 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 section 5-101 of article V of chapter 190B. Guardianship shall not include a health care proxy as defined by chapter 201D.

"Health care provider", an individual licensed, certified, or otherwise authorized or permitted by law to diagnose and treat medical conditions, and prescribe and dispense medication, including controlled substances.

"Incapacitated person", an individual who for reasons other than advanced age or being a 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. An "incapacitated person" shall be defined consistent with the definition of an individual described in section 5-101 of article V of chapter 190B.

"Informed decision", a decision by a mentally capable individual to request and obtain a prescription for medication pursuant to this chapter that the individual may self-administer to

bring about a peaceful death, after being fully informed by the attending physician and consulting physician of:

(a) The individual's diagnosis and prognosis;

(b) The potential risk associated with taking the medication to be prescribed;

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

(d) The feasible end-of-life care and treatment options for the individual's terminal disease, including but not limited to comfort care, palliative care, hospice care and pain control, and the risks and benefits of each as defined in section 227 of chapter 111; and

(e) The individual's right to withdraw a request pursuant to this chapter, or consent for any other treatment, at any time.

"Licensed mental health care professional", a treatment provider who is a psychiatrist, psychologist, psychiatric social worker or psychiatric nurse and others who by virtue of education, credentials, and experience are permitted by law to evaluate and care for the mental health needs of patients.

"Medical aid in dying", the practice of evaluating a request, determining qualification, performing the duties in sections 6, 7 and 8, and providing a prescription to a qualified individual pursuant to this chapter.

"Medically confirmed," 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", aid in dying medication.

"Mentally capable", in the opinion of the attending physician or licensed mental health care professional, the individual requesting medication pursuant to this chapter has the ability to make and communicate an informed decision.

"Palliative care", a health care treatment as defined in section 227 of chapter 111, 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", an individual who has received health care services from a health care provider for treatment of a medical condition.

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

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

"Resident", 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 MassHealth or Medicare benefit statement; or

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

“Self-administer”, a qualified patient’s act of ingesting medication obtained under this chapter.

“Terminally ill”, 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. (a) A patient wishing to receive a prescription for medication under this chapter shall make an oral request to the patient's attending physician. No less than 15 days after making the request the patient shall submit a written request to the patient's attending physician in substantially the form set in section 4.

(b) A terminally ill patient may voluntarily make an oral request for medical 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:

(1) is a mentally capable adult;

(2) is a resident of Massachusetts; and

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

(c) A patient may provide a written request for medical 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:

(1) has met the requirements in subsection (b);

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

(3) has had no less than 15 days pass after making the oral request.

(d) A patient shall not qualify under this chapter if the patient has a guardian.

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

Section 3. (a) 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:

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

(2) acting voluntarily; and

(3) not being coerced to sign the request.

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

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

(2) 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;

(3) financially responsible for the medical care of the patient; or

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

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

(d) 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.

REQUEST FOR MEDICAL AID IN DYING MEDICATION PURSUANT TO THE MASSACHUSETTS 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 medical aid in dying medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives and additional treatment opportunities, including, but not limited to, comfort care, palliative care, hospice care, and pain control.

I request that my attending physician prescribe medical 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 medical 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 not to 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. (a) A qualified patient may at any time rescind the request for medication under this chapter without regard to the qualified patient's mental state.

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

Section 6. (a) The attending physician shall:

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

(i) is a resident of this state;

(ii) is terminally ill;

(iii) is mentally capable; and

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

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

(i) the patient's medical diagnosis;

(ii) the 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 section 227 of chapter 111.

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

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

(5) ensure that sections 6 through 8, inclusive, are followed in chronological order;

(6) have a prior clinical relationship with the patient, unless the patient's primary care physician is unwilling to participate;

(7) recommend that the patient notify the patient's family or any person who plays a significant role in an individual's life;

(8) recommend that the patient complete a Medical Order for Life-Sustaining Treatment form;

(9) counsel the patient about the importance of:

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

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

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

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

(12) educate the patient on how to self-administer the medication;

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

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

(15) (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 shall not be dispensed by mail or other form of courier.

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

Section 7. (a) Before a patient may be considered a qualified patient under this chapter the consulting physician shall:

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

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

(3) verify that the patient:

(i) is mentally capable;

(ii) is acting voluntarily; and

(iii) has made an informed decision.

Section 8. (a) An attending physician shall refer a patient who has requested medical aid in dying 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 shall review the medical history of the patient relevant to the patient's current mental health and then shall submit a final written report to the prescribing physician.

(b) The medical aid in dying medication may not be prescribed until the individual performing the counseling determines that:

(1) the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment; and

(2) there is no reason to suspect coercion in the patient's decision-making process.

Section 9. A qualified patient may not receive a prescription for medical aid in dying medication pursuant to this chapter unless the patient has made an informed decision. Immediately before issuing a prescription for medical aid in dying medication under this chapter the attending physician shall verify that the qualified patient is making an informed decision.

Section 10. The attending physician shall recommend that a patient notify the patient's family or any person who plays a significant role in an individual's life of the patient's request for medical aid in dying medication pursuant to this chapter. A request for medical aid in dying

medication shall not be denied because a patient declines or is unable to notify the family or any person who plays a significant role in an individual’s life.

Section 11. The following items shall be documented or filed in the patient's medical record:

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

(2) all oral requests by a patient for medical aid in dying medication;

(3) all written requests by a patient for medical aid in dying medication made pursuant to sections 3 through 5, inclusive;

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

(5) the consulting physician's diagnosis, prognosis, and verification that the patient is mentally 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 medical aid in dying medication to allow the qualified patient to rescind the patient's request for the medication;

(8) other care options that were offered to the patient, including, but not limited to, hospice and palliative care; and

(9) 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. Any medical aid in dying medication dispensed under this chapter that was not self-administered shall be disposed of by lawful means. The medication dispenser shall be responsible for informing the individual collecting the medication what disposal by lawful means entails.

Section 13. Physicians shall keep a record of the number of requests for medical aid in dying medication; number of prescriptions written; number of requests rescinded; the number of qualified patients that took the medication under this chapter; the general demographic and socioeconomic characteristics of the patient, and any physical disability of the patient. This data shall be reported to the department of public health annually, and shall subsequently be made available to the public.

Section 14. (a) 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 medical aid in dying medication pursuant to this chapter, is not valid.

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

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

(d) 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 medical aid in dying medication, shall not for any purpose, constitute elder abuse, neglect, assisted suicide, mercy killing, or homicide under any civil or criminal law.

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

Section 15. (a) A health care provider may choose not to practice medical aid in dying.

(b) 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 medical aid in dying medication to a qualified patient under this chapter.

(c) 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.

(d) (1) Health care providers shall maintain and disclose upon request their written policies outlining the extent to which they refuse to participate in providing to a qualified patient any medical aid in dying medication under this chapter.

(2) The required consumer disclosure shall at minimum:

(i) include information about this chapter;

(ii) identify the specific services in which the health care provider refuses 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 to an individual upon request.

(d) A health care entity that prohibits health care providers from qualifying, prescribing, or dispensing medication pursuant to this chapter while they are performing duties for the entity shall provide notice of such policy to the public by posting the information on its website.

Section 16. (a) Purposely or knowingly altering or forging a request for medical aid in dying medication under this chapter without authorization of the patient or concealing or destroying a rescission of a request for medical aid in dying medication is punishable as a felony if the act is done with the intent or effect of causing the patient's death.

(b) An individual who coerces or exerts undue influence on a patient to request medical aid in dying medication, 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 3 years or in the house of

correction for not more than 2½ years or by a fine of not more than $1,000 or by both such fine and imprisonment.

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

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

Section 17. A governmental entity that incurs costs resulting from a qualified patient self-administering medical aid in dying 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. If an emergency medical provider finds a patient who has self-administered medical aid in dying medication, they shall follow standard resuscitation protocol. If a Medical Order for Life-Sustaining Treatment or other legally recognized do-not-resuscitate order is found, then the medical provider shall follow the directives of the form.

Section 19. 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 20. If any provision of this chapter 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.