



Patient-Directed Care at End of Life Annual Report

March 18, 2020

Pursuant to Title 22, MRS §2140(17)

Submitted by:

Maine Department of Health and Human Services

Prepared by:

Kim Haggan, State Registrar
Director of Data, Research, and Vital Statistics
Maine Center for Disease Control and Prevention
Maine Department of Health and Human Services

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Executive Summary

In accordance with 22 MRS § 2140(17), the Department of Health and Human Services (Department) shall generate and make available to the public an annual statistical report of information collected under the Maine Death with Dignity Act (Act). The Department is mandated to submit a copy of the report to the Joint Standing Committee of the Legislature having jurisdiction over health matters, annually by March 1st. This first report covers the period of time between September 19, 2019 and December 31, 2019. Subsequent reports will be submitted March 1st and cover the previous calendar year.

This March 2020 report provides statistics concerning the utilization of Patient-directed Care, 22 MRS chapter 418. Specifically, this report provides information about patients who have reportedly met the requirements of the Act, the underlying causes of qualified patient death, and the number of prescriptions for life-ending medication written or dispensed to qualified patients.

Introduction

In 2019, the 129th Maine Legislature passed Public Law 271 known and cited as the Death with Dignity Act (Appendix A). The Act enables physicians to prescribe medication to a Maine resident with a terminal condition with the intent that the medication be self-administered for the purpose of hastening the patient's death. The Act set forth conditions for the patient and the physician for this action to be taken lawfully. Those conditions include, but are not limited to, an oral and written request by the patient to the physician, a reminder that all steps in the process must be voluntary, that the patient be capable of making such a decision, confirmation of the diagnosis and prognosis by a second physician, and an attestation by a qualified witness to these steps.

Once the prescribing physician fulfills all of the statutory requirements, the physician is required to attest to compliance with the Act and submit required report forms to the Department. The fact that a health care provider participates in activities under this Act may not be the sole basis for a complaint or report by another health care provider to the appropriate licensing board under Title 32, including, but not limited to, the Board of Licensure in Medicine, the Board of Osteopathic Licensure and the Maine Board of Pharmacy.

Within six months of the effective date of the Act, the Department is directed to adopt major substantive rules to facilitate the collection of information regarding compliance with the Act. The information collected is confidential, is not a public record and may not be made available for inspection by the public.

On June 12, 2019, Governor Janet Mills issued executive order number 9 FY19/20, directing the Department to conduct rulemaking on an emergency basis following the enactment of 2019 PL c. 271. Emergency rulemaking was conducted in accordance with 5 MRS §8054, and the Death with Dignity Act Reporting Rule, 10-146 CMR chapter 15, was in place when the law became effective on September 19, 2019 (Appendix B). The emergency rule provided guidance on reporting requirements for physicians to demonstrate that the individual made an informed decision about their end-of-life care and to ensure compliance with the law. Reporting forms were developed to collect the information required both in law and in the Governor's executive order.

To coincide with expiration of the emergency rule as means to ensuring continuity, the Department submitted for provisional adoption, a major substantive rule in January 2020. In accordance with the Maine Administrative Procedures Act, this major substantive rule was submitted to the legislature for review and approval for final adoption.

In March 2020, the Health and Human Services Committee voted to pass LD 2068, *Resolve, Regarding Legislative Review of Portions of Chapter 15: Death with Dignity Act Reporting Rule, a Major Substantive Rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention*, to be engrossed as amended.

Currently in effect, the Death with Dignity Act Reporting Rule requires up to five documents for reporting and compliance purposes. The content of reporting forms required by the Department is consistent with the statute. Forms are found on the Data, Research, and Vital Statistics (DRVS) website¹ or by request to the State Registrar and these forms are: the Request for Medication to End My Life in a Humane and Dignified Manner Form that is to be completed and signed by the patient and two witnesses; Interpreter Attachment Form, if applicable; the Consulting Physician Form that is to be signed by a physician who has reviewed and confirmed the medical opinion of the attending physician; the Attending Physician End-of Life Reporting Form which certifies all the requirements of the Act have been met, including adherence to the waiting periods set forth by the Act; and the End-of-Life Closure Form to be completed by the attending physician within 30 days of the death of the qualified patient (Appendix C).

Summary

The following summary is based on cases reportable under the Act and reported to the Department's Office of Data, Research and Vital Statistics between the time period of September 19, 2019, and December 31, 2019.

General Statistics

- There was one event for this reporting period.
- The underlying diagnosis was prostate cancer.
- The individual was more than 65 years old, a longtime Maine resident, educated with a college degree.
- The mechanism for death was patient choice/self-administered medication.

Prescriptions

- A prescription of digoxin, diazepam, morphine sulfate, and amitriptyline was dispensed.

¹ Maine CDC Office of Data, Research and Vital Statistics; <https://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/forms/index.shtml>

Appendices

Appendix A

22 MRS chapter 418, available for download at:

<http://legislature.maine.gov/legis/statutes/22/title22sec2140.html>

Appendix B

10-146 CMR chapter 15, available for download at:

<http://www.maine.gov/sos/cec/rules/10/chaps10.htm#146>

Appendix C

Reporting Forms (Attending Physician End-of-Life Reporting Form, Consulting Physician Form, Interpreter Attachment Form, Request for Medication to End My Life in a Humane and Dignified Manner Form, End of Life Closure Form), available for download at:

<http://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/forms/index.shtml>

Appendix A

MRS Title 22, §2140. PATIENT-DIRECTED CARE AT THE END OF LIFE

§2140. Patient-directed care at the end of life

1. Short title. This chapter may be known and cited as "the Maine Death with Dignity Act."

2. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Adult" means a person who is 18 years of age or older.

B. "Attending physician" means the physician who has primary responsibility for the care of a patient and the treatment of that patient's terminal disease.

C. "Competent" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

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

E. "Counseling" means one or more consultations between a state-licensed psychiatrist, state-licensed psychologist, state-licensed clinical social worker or state-licensed clinical professional counselor and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

F. "Health care provider" means:

(1) A person licensed, certified or otherwise authorized or permitted by law to administer health care services or dispense medication in the ordinary course of business or practice of a profession; or

(2) A health care facility.

G. "Informed decision" means a decision by a qualified patient to request and obtain a prescription for medication that the qualified patient may self-administer to end the qualified patient's life in a humane and dignified manner that is based on an appreciation of the relevant facts and that is made after being fully informed by the attending physician of:

(1) The qualified patient's medical diagnosis;

(2) The qualified patient's prognosis;

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

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

(5) The feasible alternatives to taking the medication to be prescribed, including palliative care and comfort care, hospice care, pain control and disease-directed treatment options.

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

I. "Patient" means an adult who is under the care of a physician.

J. "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in this State.

K. "Qualified patient" means a competent adult who is a resident of this State and who has satisfied the requirements of this Act in order to obtain a prescription for medication that the qualified patient may self-administer to end the qualified patient's life in a humane and dignified manner.

L. "Self-administer" means, for a qualified patient, to voluntarily ingest medication to end the qualified patient's life in a humane and dignified manner.

M. "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within 6 months.

3. Right to information. A patient has a right to information regarding all treatment options reasonably available for the care of the patient, including, but not limited to, information in response to specific questions about the foreseeable risks and benefits of medication, without a physician's withholding requested information regardless of the purpose of the questions or the nature of the information.

4. Written request for medication. An adult who is competent, is a resident of this State, has been determined by an attending physician and a consulting physician to be suffering from a terminal disease and has voluntarily expressed the wish to die may make a written request for medication that the adult may self-administer in accordance with this Act. An adult does not qualify under this Act solely because of age or disability.

5. Form of written request. A valid request for medication under this Act must be substantially in the form described in subsection 24, signed and dated by the patient and witnessed by at least 2 individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is competent, is acting voluntarily and is not being coerced to sign the request.

A. The language of a written request for medication under this Act must be the language in which any conversations or consultations or interpreted conversations or consultations between a patient and the patient's attending physician or consulting physician are held.

B. Notwithstanding paragraph A, the language of a written request for medication under this Act may be English when the conversations or consultations or interpreted conversations or consultations between a patient and the patient's attending physician or consulting physician were conducted in a language other than English if the form described in subsection 24 contains the attachment described in subsection 25.

C. At least one of the 2 or more witnesses required under this subsection and any interpreter required under this subsection must be a person who is not:

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

(2) A person 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 any law; or

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

D. The patient's attending physician at the time the written request is signed may not be a witness.

E. If the patient is a patient in a long-term care facility at the time the patient makes the written request, one of the witnesses must be an individual designated by the facility who has the qualifications specified by the department by rule.

6. Attending physician responsibilities. The attending physician shall:

- A. Make the initial determination of whether a patient has a terminal disease, is competent and has made the written request under subsection 4 voluntarily;
- B. Request that the patient demonstrate state residency as required by subsection 15;
- C. To ensure that the patient is making an informed decision, inform the patient of:
 - (1) The patient's medical diagnosis;
 - (2) The patient's prognosis;
 - (3) The potential risks associated with taking the medication to be prescribed;
 - (4) The probable result of taking the medication to be prescribed; and
 - (5) The feasible alternatives to taking the medication to be prescribed, including palliative care and comfort care, hospice care, pain control and disease-directed treatment options;
- D. Refer the patient to a consulting physician for medical confirmation of the diagnosis and for a determination that the patient is competent and acting voluntarily;
- E. Confirm that the patient's request does not arise from coercion or undue influence by another individual by discussing with the patient, outside the presence of any other individual, except for an interpreter, whether the patient is feeling coerced or unduly influenced;
- F. Refer the patient for counseling, if appropriate, as described in subsection 8;
- G. Recommend that the patient notify the patient's next of kin;
- H. Counsel the patient about the importance of having another person present when the patient takes the medication prescribed under this Act, and counsel the patient about not taking the medication prescribed under this Act in a public place;
- I. Inform the patient that the patient has an opportunity to rescind the request at any time and in any manner and offer the patient an opportunity to rescind the request at the end of the 15-day waiting period pursuant to subsection 11;
- J. Verify, immediately before writing the prescription for medication under this Act, that the patient is making an informed decision;
- K. Fulfill the medical record documentation requirements of subsection 14;
- L. Ensure that all appropriate steps are carried out in accordance with this Act before writing a prescription for medication to enable a qualified patient to end the qualified patient's life in a humane and dignified manner; and
- M. Dispense medications directly, including ancillary medications intended to minimize the patient's discomfort, if the attending physician is authorized under state law or rule to dispense medications and has a current drug enforcement administration certificate or with the patient's written consent:
 - (1) Contact a pharmacist and inform the pharmacist of the prescription; and
 - (2) Deliver the written prescription personally, by mail or electronically to the pharmacist, who may dispense the medications in person to the patient, the attending physician or an expressly identified agent of the patient.

7. Consulting physician confirmation. Before a patient is determined to be a qualified patient under this Act, a consulting physician shall examine the patient and the patient's relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease and verify that the patient is competent, is acting voluntarily and has made an informed decision.

8. Consulting referral. If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, the physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner may not be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

9. Informed decision. A qualified patient may not receive a prescription for medication under this Act unless the qualified patient has made an informed decision. Immediately before writing a prescription for medication under this Act, the attending physician shall verify that the qualified patient is making an informed decision.

10. Notification of next of kin. A patient who declines or is unable to notify the patient's next of kin may not have the patient's request for medication denied for that reason.

11. Written and oral requests. To receive a prescription for medication that the qualified patient may self-administer under this Act, a qualified patient must make an oral request and a written request and reiterate the oral request to the qualified patient's attending physician at least 15 days after making the initial oral request. At the time the qualified patient makes the qualified patient's 2nd oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request.

12. Right to rescind request. A patient may rescind the patient's request at any time and in any manner without regard to the patient's mental state. A prescription for medication may not be written under this Act without the attending physician's offering the qualified patient an opportunity to rescind the request.

13. Waiting periods. At least 15 days must elapse between the patient's initial oral request and the date the patient signs the written request under subsection 11. At least 48 hours must elapse between the date the patient signs the written request and the writing of a prescription under this Act.

14. Medical record documentation requirements. The following must be documented or filed in a patient's medical record:

- A. All oral requests by the patient for medication to end that patient's life in a humane and dignified manner;
- B. All written requests by the patient for medication to end that patient's life in a humane and dignified manner;
- C. The attending physician's diagnosis and prognosis and the attending physician's determination that the patient is competent, is acting voluntarily and has made an informed decision;
- D. The consulting physician's diagnosis and prognosis and the consulting physician's verification that the patient is competent, is acting voluntarily and has made an informed decision;

E. A report of the outcome and determinations made during counseling, if counseling is provided as described in subsection 8;

F. The attending physician's offer to the patient to rescind the patient's request at the time of the patient's 2nd oral request under subsection 11; and

G. A note by the attending physician indicating that all requirements under this Act have been met, including the requirements of subsection 6, and indicating the steps taken to carry out the patient's request, including a notation of the medication prescribed.

15. Residency requirement. For purposes of this Act, only requests made by residents of this State may be granted. The residence of a person is that place where the person has established a fixed and principal home to which the person, whenever temporarily absent, intends to return. The following factors may be offered in determining a person's residence under this Act and need not all be present in order to determine a person's residence:

A. Possession of a valid driver's license issued by the Department of the Secretary of State, Bureau of Motor Vehicles;

B. Registration to vote in this State;

C. Evidence that the person owns or leases property in this State;

D. The location of any dwelling currently occupied by the person;

E. The place where any motor vehicle owned by the person is registered;

F. The residence address, not a post office box, shown on a current income tax return;

G. The residence address, not a post office box, at which the person's mail is received;

H. The residence address, not a post office box, shown on any current resident hunting or fishing licenses held by the person;

I. The residence address, not a post office box, shown on any driver's license held by the person;

J. The receipt of any public benefit conditioned upon residency, defined substantially as provided in this subsection; or

K. Any other objective facts tending to indicate a person's place of residence.

16. Disposal of unused medications. A person who has custody of or control over any unused medications prescribed pursuant to this Act after the death of the qualified patient shall personally deliver the unused medications to the nearest facility qualified to dispose of controlled substances or, if such delivery is impracticable, personally dispose of the unused medications by any lawful means, in accordance with any guidelines adopted by the department.

17. Reporting of information; adoption of rules; information collected not a public record; annual statistical report. The department shall:

A. Annually review all records maintained under this Act;

B. Require any health care provider upon writing a prescription or dispensing medication under this Act to file a copy of the prescription or dispensing record, and other documentation required under subsection 14 associated with writing the prescription or dispensing the medication, with the department.

(1) Documentation required to be filed under this paragraph must be mailed or otherwise transmitted as allowed by rules of the department no later than 30 calendar days after the writing of the prescription or the dispensing of medication under this Act, except that all documents required to be filed with the department by the prescribing physician after the death of the qualified patient must be submitted no later than 30 calendar days after the date of the death of the qualified patient.

(2) In the event that a person required under this Act to report information to the department provides an inadequate or incomplete report, the department shall contact the person to request an adequate or complete report;

C. Within 6 months of the effective date of this Act, adopt rules, which are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A, to facilitate the collection of information regarding compliance with this Act. Except as otherwise provided by law, the information collected is confidential, is not a public record and may not be made available for inspection by the public; and

D. Generate and make available to the public an annual statistical report of information collected under paragraph C and submit a copy of the report to the joint standing committee of the Legislature having jurisdiction over health matters annually by March 1st.

18. Effect on construction of wills, contracts and other agreements. Any provision in a contract, will or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end the person's life in a humane and dignified manner, is not valid. Any obligation owing under any currently existing contract may not be conditioned upon or affected by the making or rescinding of a request by a person for medication to end the person's life in a humane and dignified manner.

19. Insurance or annuity policies. The sale, procurement or issuance of any life, health or accident insurance or annuity policy or the rate charged for any life, health or accident insurance or annuity policy may not be conditioned upon or affected by the making or rescinding of a request by a qualified patient for medication that the patient may self-administer to end the patient's life in accordance with this Act. A qualified patient whose life is insured under a life insurance policy issued under the provisions of Title 24-A, chapter 29 and the beneficiaries of the policy may not be denied benefits on the basis of self-administration of medication by the qualified patient in accordance with this Act. The rating, sale, procurement or issuance of any medical professional liability insurance policy delivered or issued for delivery in this State must be in accordance with the provisions of Title 24-A.

20. Authority of Act; references to acts committed under Act; applicable standard of care. This Act does not authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with this Act do not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide under the law. State reports may not refer to acts committed under this Act as "suicide" or "assisted suicide." Consistent with the provisions of this Act, state reports must refer to acts committed under this Act as obtaining and self-administering life-ending medication. Nothing contained in this Act may be interpreted to lower the applicable standard of care for the attending physician, the consulting physician, a psychiatrist or a psychologist or other health care provider providing services under this Act.

21. Voluntary participation. Nothing in this Act requires a health care provider to provide medication to a qualified patient to end the qualified patient's life. If a health care provider is unable or unwilling to carry out the qualified patient's request under this Act, the health care provider shall transfer any relevant medical records for the patient to a new health care provider upon request by the patient.

22. Basis for prohibiting persons or entities from participation; notification; penalties; permissible actions. The following provisions govern the basis for prohibiting persons or entities from participating in activities under this Act, notification, penalties and permissible actions.

A. Subject to compliance with paragraph B and notwithstanding any other law, a health care provider may prohibit its employees, independent contractors or other persons or entities, including other health care providers, from participating in activities under this Act while on premises owned or under the management or direct control of that prohibiting health care provider or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

B. A health care provider that elects to prohibit its employees, independent contractors or other persons or entities, including other health care providers, from participating in activities under this Act, as described in paragraph A, shall first give notice of the policy prohibiting participation under this Act to those employees, independent contractors or other persons or entities, including other health care providers. A health care provider that fails to provide notice to those employees, independent contractors or other persons or entities, including other health care providers, in compliance with this paragraph may not enforce such a policy against those employees, independent contractors or other persons or entities, including other health care providers.

C. Subject to compliance with paragraph B, the prohibiting health care provider may take action, including, but not limited to, the following, as applicable, against an employee, independent contractor or other person or entity, including another health care provider, that violates this policy:

(1) Loss of privileges, loss of membership or other action authorized by the bylaws or rules and regulations of the medical staff;

(2) Suspension, loss of employment or other action authorized by the policies and practices of the prohibiting health care provider;

(3) Termination of any lease or other contract between the prohibiting health care provider and the employee, independent contractor or other person or entity, including another health care provider, that violates the policy; or

(4) Imposition of any other nonmonetary remedy provided for in any lease or contract between the prohibiting health care provider and the employee, independent contractor or other person or entity, including another health care provider, in violation of the policy.

D. Nothing in this section may be construed to prevent, or to allow a prohibiting health care provider to prohibit, an employee, independent contractor or other person or entity, including another health care provider, from any of the following:

(1) Participating, or entering into an agreement to participate, in activities under this Act while on premises that are not owned or under the management or direct control of the prohibiting health care provider or while acting outside the course and scope of the participant's duties as an employee of, or an independent contractor for, the prohibiting health care provider; or

(2) Participating, or entering into an agreement to participate, in activities under this Act as an attending physician or consulting physician while on premises that are not owned or under the management or direct control of the prohibiting health care provider.

E. In taking actions pursuant to paragraph C, a health care provider shall comply with all procedures required by law, its own policies or procedures and any contract with the employee, independent contractor or other person or entity, including another health care provider, in violation of the policy, as applicable.

F. Any action taken by a prohibiting health care provider pursuant to this subsection is not reportable to the appropriate licensing board under Title 32, including, but not limited to, the Board of Licensure in Medicine, the Board of Osteopathic Licensure and the Maine Board of Pharmacy. The fact that a health care provider participates in activities under this Act may not be the sole basis for a complaint or report by another health care provider to the appropriate licensing board under Title 32, including, but not limited to, the Board of Licensure in Medicine, the Board of Osteopathic Licensure and the Maine Board of Pharmacy.

G. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Notice" means a separate statement in writing advising of the prohibiting health care provider's policy with respect to participating in activities under this Act.

(2) "Participating, or entering into an agreement to participate, in activities under this Act" means doing or entering into an agreement to do any one or more of the following:

(a) Performing the duties of an attending physician as specified in this Act;

(b) Performing the duties of a consulting physician as specified in this Act;

(c) Performing the duties of a state-licensed psychiatrist, state-licensed psychologist, state-licensed clinical social worker or state-licensed clinical professional counselor, in the circumstance that a referral to one is made pursuant to subsection 8;

(d) Delivering the prescription for, dispensing or delivering the dispensed medication pursuant to this Act; or

(e) Being present when the qualified patient takes the medication prescribed pursuant to this Act.

(1) "Participating, or entering into an agreement to participate, in activities under this Act" does not include doing, or entering into an agreement to do, any of the following: diagnosing whether a patient has a terminal disease, informing the patient of the medical prognosis or determining whether a patient has the capacity to make decisions; providing information to a patient about this Act; or providing a patient, upon the patient's request, with a referral to another health care provider for the purposes of participating in the activities authorized by this Act.

23. Claims by governmental entity for costs incurred. Any governmental entity that incurs costs resulting from a person ending the person's life under this Act in a public place has a claim against the estate of the person to recover the costs and reasonable attorney's fees related to enforcing the claim.

24. Form of the request. A request for medication as authorized by this Act must be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

I,, am an adult of sound mind. I am suffering from, which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis and prognosis, the nature of medication to be prescribed and potential associated risks, the expected result and feasible alternatives, including palliative care and comfort care, hospice care, pain control and disease-directed treatment options.

I request that my attending physician prescribe medication that I may self-administer to end my life in a humane and dignified manner and contact any pharmacist to fill the prescription.

INITIAL ONE:

- I have informed my family of my decision and taken their opinions into consideration.
- I have decided not to inform my family of my decision.
- I have no family to inform of my decision.

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 when I take the medication to be prescribed.
I further understand that, although most deaths occur within 3 hours, my death may take longer and my physician has counseled me about this possibility.
I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed:

Dated:

DECLARATION OF WITNESSES

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request:

Initials of Witness 1:

- 1. Is personally known to us or has provided proof of identity;
- 2. Signed this request in our presence on the date of the person's signature;
- 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 the attending physician.

Printed Name of Witness 1:

Signature of Witness 1/Date:

Initials of Witness 2:

- 1. Is personally known to us or has provided proof of identity;
- 2. Signed this request in our presence on the date of the person's signature;
- 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 the attending physician.

Printed Name of Witness 2:

Signature of Witness 2/Date:

NOTE: One witness must be a person who is not a relative by blood, marriage or adoption of the person signing this request, is not entitled to any portion of the person's estate upon death and does not own or operate or is not employed at a health care facility where the person is a patient or resident. The person's attending physician at the time the request is signed may not be a witness. If the person is an inpatient at a long-term care facility, one of the witnesses must be an individual designated by the facility.

25. Form of interpreter attachment. The form of an attachment for purposes of providing interpretive services as described in subsection 5, paragraph B must be in substantially the following form:

I,, am fluent in English and (language of patient).

On (date) at approximately (time) I read the "REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER" to (name of patient) in (language of patient).

Mr./Ms. (name of patient) affirmed to me that he/she understands the content of this form, that he/she desires to sign this form under his/her own power and volition and that he/she requested to sign the form after consultations with an attending physician and a consulting physician.

Under penalty of perjury, I declare that I am fluent in English and (language of patient) and that the contents of this form, to the best of my knowledge, are true and correct.

Executed at (name of city, county and state) on (date).

Interpreter's signature:

Interpreter's printed name:

Interpreter's address:

Appendix B

STATE OF MAINE
DEATH WITH DIGNITY ACT
REPORTING RULE
10-146 CODE OF MAINE RULES
CHAPTER 15



Department of Health and Human Services
Maine Center for Disease Control and Prevention
11 State House Station
Augusta, Maine 04333-0011

Effective Date: September 19, 2019 (Emergency Major Substantive Rule)

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SECTION 1. PURPOSE AND DEFINITIONS

- A. Purpose.** This rule implements 22 MRS chapter 418, the *Maine Death with Dignity Act*, and specifies the Department's authority to collect and use information related to patient-directed care at the end of life.
- B. Definitions.** As used in this rule, unless the context indicates otherwise, the following terms have the following meanings:
1. **Act** means the *Maine Death with Dignity Act*, 22 MRS Chapter 418.
 2. **Attending physician** means the physician who has primary responsibility for the care of a patient and the treatment of that patient's terminal disease.
 3. **Competent** means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating, if those persons are available.
 4. **Consulting physician** means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a patient's disease.
 5. **Department** means the Department of Health and Human Services, Maine Center for Disease Control and Prevention.
 6. **Form** means a form prescribed by the Department that the Department requires to be completed for purposes of compliance with this rule. Forms that are missing required signatures, dates or information will not be considered valid or acceptable.
 7. **Life-ending medication** means the medication prescribed or dispensed by a licensed healthcare provider in accordance with the Act to be self-administered by the qualified patient suffering from a terminal disease to end the qualified patient's life in a humane and dignified manner.
 8. **Physician** means a doctor of medicine or osteopathy licensed pursuant to 32 MRS chapter 48 or 36.
 9. **Qualified patient** means a competent adult who is a resident of this State and who has satisfied the requirements of the Act in order to obtain a prescription for medication that the qualified patient may self-administer to end the qualified patient's life in a humane and dignified manner.

SECTION 2. SCOPE

This rule applies to healthcare providers involved in the decisions pursuant to the Act. This rule establishes reporting requirements related to patient-directed care at the end of life and responsibilities of healthcare providers participating in specific conduct under the Act. This rule does not require a healthcare provider to provide life-ending medication to a qualified patient.

SECTION 3. RESPONSIBILITIES OF HEALTHCARE PROVIDERS

- A. Compliance.** The attending physician must verify that all requirements of the Act have been met before prescribing or dispensing life-ending medication. The attending physician is responsible for ensuring that copies of all required forms are received by the Department. The attending physician must ensure that each original, completed form is retained in the qualified patient's medical record. Copies of required forms must be filed within 30 days after the date the prescription for life-ending medication is written, unless otherwise specified.
- B. Request for Medication to End My Life in a Humane and Dignified Manner.** The Request for Medication to End My Life in a Humane and Dignified Manner Form must be used for all written requests for life-ending medication. This form must be completed by the patient and two witnesses no sooner than 15 days following the patient's first verbal request for life-ending medication, in accordance with 22 MRS §§ 2140(5) and 2140(24). A copy of the completed form must be provided to the qualified patient.
1. **Witnesses.** The qualified patient's signature on this form must be witnessed by at least two individuals who, in the presence of the qualified patient, attest that to the best of their knowledge and belief, the patient is competent, is acting voluntarily, and is not being coerced to sign the request. One witness must be a person who is not a relative of the patient by blood, marriage, or adoption; a person who at the time the form is signed would be entitled to any portion of the estate of the patient upon death, under any will or by operation of any law; or an owner, operator or employee of a health care facility where the patient is receiving medical treatment or is a resident.
 - a. **Attending Physician.** The patient's attending physician at the time the written request is signed may not be a witness.
 - b. **Patient in a Long-Term Care Facility.** If the patient resides in a long-term care facility at the time of the patient's written request, one witness must be a licensed healthcare provider designated by the facility. The facility's designee may be an owner, operator or employee of the healthcare facility where the patient resides.
- C. Interpreter Attachment.** The Interpreter Attachment Form is only required if an interpreter is used pursuant to 22 MRS §2140(5)(B), to interpret conversations or consultations between the patient and the patient's attending or consulting physician in a language other than English, regarding the written request for life-ending medication. If an interpreter is used, this form, containing the elements required by 22 MRS §2140 (25), must accompany the Request for Medication to End My Life in a Humane and Dignified Manner Form.
1. **Interpreter Limitations.** The interpreter must not be a person who is a relative of the patient by blood, marriage, or adoption; a person who at the time the written request is signed would be entitled to any portion of the estate of the patient upon death, under any will or by operation of any law; or an owner, operator, or employee of a health care facility where the patient is receiving medical treatment or is a resident.
- D. Consulting Physician End-of-Life Care Form.** The Consulting Physician End-of-Life Care Form, containing the reporting requirements of 22 MRS §§ 2140 (7) and 2140 (14)(D), must be completed by the consulting physician who has examined the patient, has reviewed the patient's medical record, and who has confirmed the medical opinion of the attending

physician that the patient is suffering from a terminal disease and has verified that the patient is competent, is acting voluntarily, and has made an informed decision.

- E. Attending Physician End-of-Life Reporting Form.** The Attending Physician End-of-Life-Reporting Form must be completed by the attending physician to certify that all requirements of the Act have been met, including the attending physician's responsibilities at 22 MRS §2140(6), the documentation requirements at 22 MRS §2140(14), and the waiting periods set forth at 22 MRS §2140(13). A copy of the written prescription record must accompany this form.
- F. End-of-Life Closure Form.** The End-of-Life Closure Form must be completed by the attending physician within 30 days after the qualified patient's death, in accordance with 22 MRS §2140 (17)(B)(1). If six months have passed from the date the attending physician prescribed or dispensed the life-ending medication and the qualified patient's death has not been confirmed, the attending physician must complete this form and provide a copy to the State Registrar within 30 days following the expiration of that six-month period, retaining the original in the patient's medical record.

SECTION 4. REPORTING AND RECORD RETENTION

A. Reporting.

1. Reporting must be in the manner prescribed by the Department, using the forms specified in this rule. Copies of the forms may be accessed at the Department's Data Research and Vital Statistics website at <http://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/forms/index.shtml>, or by request to the State Registrar.
2. Copies of completed forms must be mailed to the attention of the State Registrar, Office of Data, Research, and Vital Statistics, 220 Capitol Street, 11 State House Station, Augusta, Maine 04333-0011.
3. All forms must be completed in accordance with the Act and this rule. Unless otherwise specified, all forms must be submitted to the State Registrar no later than 30 days after the date of the prescription for life-ending medication is written. The Department will contact the qualified patient's attending physician when it appears that any required form has not been filed.
4. The Department will collect information from attending physicians who have prescribed or dispensed life-ending medication to ensure compliance with the Act and this rule, and for use in assembling an annual statistical report as required by the Act. Required information will include any information requested on the forms prescribed by the Department and specified in this rule. Additionally, the Department may request from an attending physician any other information reasonably necessary to determine compliance with the Act and this rule.

B. Record Retention.

1. The attending physician prescribing or dispensing life-ending medication to a qualified patient must retain the original of each required form in the patient's medical record.

2. Paper forms submitted to the State Registrar will be retained by the Department to inform the annual report and may be destroyed only after the Department publishes the yearly report required by the Act.
- C. Confidentiality.** Information collected by the Department pursuant to this rule is confidential, is not a public record, and may not be made available for inspection by the public.
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STATUTORY AUTHORITY AND HISTORY

STATUTORY AUTHORITY:

22 MRS Chapter 418 §2140

EFFECTIVE DATE:

September 19, 2019 – filing 2019-170 (*Emergency major substantive*)

Appendix C

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Maine Center for Disease Control and Prevention
11 State House Station
220 Capitol Street
Augusta, Maine 04333-0011
Tel; (207) 287-5500; Toll Free: (888) 664-9491
TTY: Dial 711 (Maine Relay); Fax (207) 287-5470

Request for Medication to End My Life in a Humane and Dignified Manner

Part One: Declaration of Patient

I, _____, am an adult of sound mind and am a resident of the State of Maine and have been since _____ (month) of _____ (year) and I am suffering from _____, which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis and prognosis, the nature of the medication to be prescribed and potential associated risks, the expected result and feasible alternatives, including palliative care and comfort care, hospice care, pain control and disease-directed treatment options.

I request that my attending physician prescribe medication that I may self-administer to end my life in a humane and dignified manner and contact any pharmacist to fill the prescription.

INITIAL ONE:

_____ I have informed my family of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family of my decision.

_____ I have no family to inform of my decision.

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 when I take the medication to be prescribed. I further understand that, although most deaths occur within 3 hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signature	Date
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Part Two: Declaration of Witnesses

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing above request:

Initials of Witness 1:

- _____ 1. Is personally known to us or has provided proof of identity;
- _____ 2. Signed this request in our presence on the date of the person's signature;
- _____ 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 the attending physician.

Witness 1 Print name	Signature	Date
----------------------	-----------	------

Initials of Witness 2:

- _____ 1. Is personally known to us or has provided proof of identity;
- _____ 2. Signed this request in our presence on the date of the person's signature;
- _____ 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 the attending physician.

Witness 2 Print name	Signature	Date
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NOTE: One witness must be a person who is not a relative by blood, marriage, or adoption of the person signing this request, is not entitled to any portion of the person's estate upon death and does not own or operate or is not employed at a health care facility where the person is a patient or resident. The person's attending physician at the time of the request is signed may not be a witness. If the person is an inpatient at a long-term care facility, one of the witnesses must be a licensed healthcare provider designated by the facility; the facility's designee may be an owner, operator, or employee of the health care facility.

To the person signing this request:

Give this completed form to your attending physician. Request a copy to keep for yourself.

To the attending physician:

Retain this completed original form in the patient's medical record. Provide a copy to the State Registrar, Office of Data, Research, and Vital Statistics.

Revised 09/2019

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



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Form of Interpreter Attachment

I, _____, am fluent in English and _____
(language of patient)

On _____ (date) at approximately _____ (time) I read the "REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER" to _____ (name of patient) in _____ (language of patient).

Mr./Ms. _____ (name of patient) affirmed to me that he/she understands the content of this form, that he/she desires to sign this form under his/her own power and volition and that he/she requested to sign the form after consultations with an attending physician and a consulting physician.

Under penalty of perjury, I declare that I am fluent in English and _____ (language of the patient) and that the contents of this form, to the best of my knowledge, are true and correct.

Executed at _____ (city, county, and state)
on _____ (date).

Interpreter's signature: _____
Interpreter's printed name: _____
Interpreter's address: _____

To the interpreter: Give this completed form to the attending physician.

To the attending physician: Retain the original form in the patient's medical record. Mail a copy to the attention of the State Registrar, Office of Data, Research, and Vital Statistics.

Revised 12/2019

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
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Consulting Physician End-of-Life Care

PLEASE PRINT

A PATIENT INFORMATION	
PATIENT'S NAME (LAST, FIRST, MI)	DATE OF BIRTH
B REFERRING/ATTENDING PHYSICIAN INFORMATION	
NAME	TELEPHONE NUMBER
C CONSULTING PHYSICIAN DETERMINATIONS	
I examined the above-named patient on _____ (date) at _____ (time). I have also reviewed the patient's relevant medical records.	
By checking below, I confirm the attending physician's diagnosis that the patient is suffering from a terminal disease, specifically _____ (list diagnosis), and verify that the patient is competent, is acting voluntarily, and had made an informed decision:	
<input type="checkbox"/> a) diagnosis that patient is suffering from a terminal disease;	
<input type="checkbox"/> b) patient is competent;	
<input type="checkbox"/> c) patient is making an informed decision;	
<input type="checkbox"/> d) patient is acting voluntarily in his/her request for medication to end his/her life in a humane and dignified manner.	
D CONSULTING PHYSICIAN'S INFORMATION	
NAME (please print)	LICENSE NUMBER
MAILING ADDRESS	
CITY, STATE, ZIP	TELEPHONE NUMBER
PHYSICIAN'S SIGNATURE	DATE

To the consulting physician: Provide the completed form to the attending physician.

To the attending physician: Provide a copy of the completed form to the State Registrar, Office of Data, Research, and Vital Statistics. Retain the original in the patient's medical record.

Revised 09/2019

Janet T. Mills
Governor

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Attending Physician End-of-Life Reporting Form

PLEASE PRINT

A PATIENT INFORMATION	
PATIENT'S NAME (LAST, FIRST, MI)	DATE OF BIRTH
MEDICAL DIAGNOSIS AND PROGNOSIS	
B PHYSICIAN INFORMATION	
NAME (LAST, FIRST, MI)	TELEPHONE
MAILING ADDRESS	
CITY, STATE, ZIP	
CONSULTING PHYSICIAN NAME	TELEPHONE
C ACTION TAKEN TO COMPLY WITH LAW	
1. FIRST ORAL REQUEST	
<input type="checkbox"/> The patient made an oral request for medication to be self-administered for the purpose of ending the patient's life in a humane and dignified manner.	DATE
Comments:	
2. SECOND ORAL REQUEST (Must be made 15 days or more after the first oral request.)	
Indicate compliance by checking the boxes.	
<input type="checkbox"/> 1. The patient made a second oral request for medication to be self-administered for the purpose of ending the patient's life in a humane and dignified manner.	DATE
<input type="checkbox"/> 2. Attending physician has offered the patient an opportunity to rescind the request.	
Comments:	
3. WRITTEN REQUEST (Must be made 15 days or more after the first oral request.)	
<input checked="" type="checkbox"/> The patient made a written request for medication to be self-administered for the purpose of ending the patient's life in a humane and dignified manner.	DATE
Comments:	

4. ATTENDING PHYSICIAN DETERMINATIONS AND ACTIONS	
<p>Indicate compliance by checking the boxes. I have determined that the patient:</p> <ul style="list-style-type: none"> <input type="checkbox"/> is at least 18 years of age; <input type="checkbox"/> is suffering with a terminal disease; <input type="checkbox"/> is competent; and <input type="checkbox"/> has made a voluntary request for medication to self-administer for the purpose of ending the patient's life in a humane and dignified manner. <p>I have requested that the patient:</p> <ul style="list-style-type: none"> <input type="checkbox"/> demonstrate he/she is a Maine state resident, and I am satisfied the patient is a Maine state resident. <p>To ensure the patient is making an informed decision, I have informed the patient of the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the patient's medical diagnosis; <input type="checkbox"/> the patient's prognosis; <input type="checkbox"/> the potential risks associated with taking the medication to be prescribed; <input type="checkbox"/> the probable result of taking the medication to be prescribed; and <input type="checkbox"/> the feasible alternatives to taking the medication to be prescribed, including palliative care and comfort care, hospice care, pain control and disease-directed treatment options. <p>I have taken the additional following steps:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Referred the patient to a consulting physician for medical confirmation of the diagnosis and for a determination that the patient is competent and acting voluntarily; <input type="checkbox"/> Confirmed that the patient's request does not arise from coercion or undue influence by another individual by discussing with the patient, outside the presence of any other individual, except for an interpreter, whether the patient is making an informed decision; <input type="checkbox"/> Verified that the patient, based on my evaluation or following a referral for counseling, is not suffering from a psychiatric or psychological disorder or depression causing impaired judgement; <input type="checkbox"/> Recommended that the patient notify the patient's next of kin; <input type="checkbox"/> Counseled the patient about the importance of having another person present when the patient takes the medication prescribed, and counseled the patient about not taking the medication prescribed in a public place; <input type="checkbox"/> Informed the patient that the patient has the opportunity to rescind the request at any time and in any manner; and <input type="checkbox"/> Verified immediately before writing a prescription for life-ending medication that the patient is making an informed decision. 	
D MEDICATION PRESCRIBED AND INFORMATION PROVIDED TO PATIENT	
To be prescribed no sooner than 48 hours after the date of the written request.	
MEDICATION PRESCRIBED AND DOSAGE:	DATE PRESCRIBED
NAME OF PHARMACIST AND ADDRESS (if applicable)	
E MEDICAL COVERAGE/PATIENT INSURANCE	
What is the principal source of medical coverage for the patient?	
<ul style="list-style-type: none"> <input type="checkbox"/> a) Private Insurance <input type="checkbox"/> b) Government Payor includes Medicare, Indian Health Service, or CHAMPUS <input type="checkbox"/> c) MaineCare or Medicaid <input type="checkbox"/> d) Self Pay <input type="checkbox"/> e) None <input type="checkbox"/> f) Unknown 	
To the best of my knowledge, all of the requirements of the Death with Dignity Act, 22 M.R.S. chapter 418, have been met.	
PHYSICIAN'S SIGNATURE	DATE

If comments in any section exceed the space provided, please use an attached page. Supplemental comments should be identified using the appropriate alphanumeric notation (e.g., C3). Retain the original form in the patient's medical record. Provide a copy of the completed form to the State Registrar, Office of Data, Research, and Vital Statistics within 30 days of writing the prescription.

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



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End-of-Life Closure Form

Dear Physician:

Pursuant to the Department of Health and Human Services' authority to collect information under **the Death with Dignity Act**, 22 M.R.S. chapter 418, the Department requires physicians who write a prescription for medication for a patient to self-administer for the purpose of ending the patient's life in a humane and dignified manner to complete this follow-up form within **30 calendar days** of a patient's death, if known to the physician or **6 months of writing the prescription**.

For the Department of Health and Human Services to accept this form, it must be signed by the Attending Physician, whether or not he or she was present at the patient's time of death.

This form should be mailed to the attention of the State Registrar at: 220 Capitol Street, 11 State House Station, Augusta, Maine, 04330. *All information is kept strictly confidential.* If you have any questions, call: 207-287-5459.

Patient's Name: _____ **DOB:** ____/____/____

Name of Attending Physician: _____

Prescription Record

Did the patient die from ingesting the lethal dose of medication, from their underlying illness, or from another cause such as terminal sedation or ceasing to eat or drink? **If unknown, please mark the form indicating that.**

- 1. Patient Choice** (self-administered medication)
- 2. Underlying illness**
- 3. Unknown**
- 4. Other** (please specify):

How was the unused medication disposed of? If unknown, please indicate the same.

Attending Physician Signature: _____

Date: ____/____/____

Revised 12/2019