HB 1283-FN - AS INTRODUCED

2024 SESSION

24-2049
05/10

HOUSE BILL ***1283-FN***

AN ACT relative to end of life options.

SPONSORS: Rep. M. Smith, Straf. 10; Rep. Dutzy, Hills. 6; Rep. D. Paige, Carr. 1; Rep. Haskins, Rock. 11; Rep. Woodcock, Carr. 1; Rep. Phillips, Rock. 7; Rep. Lynn, Rock. 17; Rep. Wolf, Merr. 7; Rep. Bolton, Graf. 8; Sen. Altschiller, Dist 24

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a procedure for an individual with terminal illness to receive medical assistance in dying through the self administration of medication. The bill establishes criteria for the prescription of such medication and establishes reporting requirements and penalties for misuse or noncompliance.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
24-2049
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to end of life options.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; End of Life Options. Amend RSA by inserting after chapter 137-L the following new chapter:

CHAPTER 137-M
END OF LIFE OPTIONS

137-M:1 Definitions. In this chapter, unless the context otherwise requires, the following definitions shall apply:

I. “Adult” means an individual 18 years of age or older.

II. "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 RSA 137-J.

III. "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.
IV. “Health care provider" means any of the following individuals authorized by law to prescribe medications to be used in medical assistance in dying:
(a) A physician licensed pursuant to RSA 329;
(b) An osteopathic physician licensed pursuant to RSA 329;
(c) An advanced practice registered nurse licensed pursuant to RSA 326-B; or
(d) A physician assistant licensed pursuant to RSA 328-D.
V. “Informed decision” means a decision by a mentally competent individual to request and obtain a prescription for medications pursuant to this chapter, 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:
(a) The individual’s diagnosis and prognosis;
(b) The potential risk associated with taking the medications to be prescribed;
(c) The probable result of taking the medications to be prescribed;
(d) 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
(e) The individual’s right to withdraw a request pursuant this chapter, or consent for any other treatment, at any time.
VI. "Medical assistance in dying” means the practice wherein a health care provider evaluates a request, determines qualification, performs the duties described in RSA 137-M:6 and 137-M:7 and prescribes medications to a qualified individual who may self-administer the medications to bring about a peaceful death.
VII. "Mental health professional" means a state-licensed psychiatrist, psychologist, master social worker, psychiatric nurse practitioner or professional clinical mental health counselor.
VIII. "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.
IX. “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.
X. "Qualified individual" means an individual who has met the requirements to receive medical assistance in dying pursuant to the provisions of this chapter.
XI. "Self-administer" means taking an affirmative, conscious, voluntary action to take the prescribed medications.
XII. "Terminal" means a condition that is incurable and irreversible and will result in death.
XIII. “Prognosis of 6 months or less” means the terminal condition will, within reasonable medical judgment, result in death within 6 months.
137-M:2 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:
I. Determined that the individual has:
(a) Mental capability;
(b) A terminal condition;
(c) Prognosis of 6 months or less, or hospice eligible;
(d) Voluntarily made the request for medical assistance in dying; and
(e) The ability to self-administer the medical assistance in dying medications.
II. Determined that the individual is making an informed decision after discussing with the individual:
(a) The individual's medical diagnosis and prognosis;
(b) The potential risks associated with self-administering the medical assistance in dying medications that the individual has requested the health care provider to prescribe;

(c) The probable result of self-administering the medical assistance in dying medications to be prescribed;
(d) The individual's option of choosing to obtain the medical-assistance-in-dying medications and then deciding not to use them; and
(e) The feasible alternatives, including condition-directed treatment options, as well as hospice care and palliative care focused on relieving symptoms and reducing suffering.
III. Determined in good faith that the individual's request does not arise from coercion or undue influence by another person, institution, or other party.
IV. Noted in the individual's health record the prescribing health care provider's determination that the individual qualifies to receive medical assistance in dying.
V. Confirmed and recorded in the individual's health record that at least one licensed physician, osteopathic physician, advanced practice registered nurse, or physician assistant 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 section.
VI.(a) 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.
(b) And that the consulting health care provider has:
(1) Examined the individual;
(2) Reviewed the individual's relevant medical records; and
(3) 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 chapter.
VII. 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 6 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 3 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.
137-M:3 Standard of Care.
I. Care that complies with this chapter meets the medical standard of care.
II. Nothing in this chapter 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.
137-M:4 Determining Mental Capability. If either the attending provider or the consulting provider has doubts as to whether the individual is mentally competent and is unable to confirm that the individual is competent 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.
I. 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 competent.
II. If the licensed mental health provider determines that the individual is not mentally competent, the individual shall not be deemed a qualified individual and the attending provider shall not prescribe medication to the individual under this chapter.
137-M:5 Waiting Period. A prescription for medical-assistance-in-dying medications shall:
I. 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 RSA 137-M:2; and
II. 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.
137-M:6 Eligibility and Due Diligence.
I. A mentally competent individual that meets the criteria in RSA 137-M:2 is eligible to request a prescription for medications under this chapter. The individual may make the requests in person or via tele health pursuant to RSA 167:4-d.
II. The prescribing and consulting providers of an eligible individual shall have met all the requirements of RSA 137-M:2 and 137-M:6.
III. At the time of the second consultation, the consulting health care provider shall offer the individual an opportunity to rescind the request.
IV. 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.
V. If a requesting individual decides to transfer care to an alternative provider, the records custodian shall transfer all relevant medical records within 2 business days, including written documentation of the dates of the individual's request concerning medical assistance in dying.
137-M:7 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.
137-M:8 Immunities and Conscience-based Decisions.
I. A person shall not be subject to criminal liability, civil liability, licensing sanctions, or other professional disciplinary action for:

(a) Participating in medical assistance in dying in good faith compliance with the provisions of the chapter.
(b) 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 chapter.
(c) 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 chapter shall so inform the qualified individual at or before the time of their request.
II. 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 chapter.
III. 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 chapter, 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.
IV. A health care entity shall not forbid nor otherwise sanction a health care provider who provides medical assistance in dying in accordance with the chapter 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.
V. 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:
(a) On the premises of the health care entity; or
(b) Within the course and scope of the health care provider's employment for the health care entity.
VI. Nothing in this section shall be construed to prevent:
(a) 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
(b) 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.
VII. Participating, or not participating, in medical assistance in dying shall not be the basis for a report of unprofessional conduct.
VIII. 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.
137-M:9 Prohibited Acts.
I. Nothing in the chapter 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 chapter shall not be construed, for any purpose, to constitute suicide, assisted suicide, euthanasia, mercy killing, homicide, or adult abuse under the law.
II. 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.

III. Any person who knowingly does any of the following with the intent to cause, interfere with, or prevent a qualified individual's death against the qualified individual's wishes shall be guilty of a felony:

(a) Altering, forging, concealing, or destroying a request for a terminal prescription without the qualified individual's authorization.

(b) Concealing or destroying a withdrawal or rescission of a request for a terminal prescription without the qualified individual's authorization.

(c) 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.

(d) 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.

(e) Coercing or exerting undue influence on a qualified individual to prevent the qualified individual from requesting or self-administering a terminal prescription.

IV. Nothing in this section limits civil liability or damages arising from negligent conduct or intentional misconduct by the provider or health care entity.

V. The penalties specified in this chapter do not preclude criminal penalties applicable under other laws for conduct inconsistent with this chapter.

137-M:10 Reporting.

I. A health care provider who prescribes medical assistance in dying to a qualified individual in accordance with the provisions of this chapter shall provide a report of that provider's participation. The department of health and human services shall adopt rules pursuant to RSA 541-A, 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:

(a) The qualified individual's age at death;

(b) The qualified individual's race and ethnicity;

(c) The qualified individual's gender;

(d) Whether the qualified individual was enrolled in hospice prior to or at the time of death;

(e) The qualified individual's underlying medical condition; and

(f) Whether the qualified individual self- administered the medical assistance in dying medications and, if so, the date that this occurred.

II. The department of health and human services shall promulgate an annual statistical report, containing aggregated data, on the information collected pursuant to paragraph I 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 section shall not contain individually identifiable health information and are exempt from disclosure pursuant to the Inspection of Public Records Act.

137-M:11 Effect on Construction of Wills, Contracts, and Statutes.

I. 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 chapter is valid.

II. 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 chapter.

III. 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.

137-M:12 Insurance and Annuity Policies.

I. 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 chapter.

II. A qualified individual's act of self-administering medications pursuant to this chapter does not invalidate any part of a life, health, or accident insurance, or annuity policy.
III. No insurer shall 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 chapter, or the absence of a request for medications pursuant to this chapter.
IV. Any insurer in violation of this section shall be subject to the penalties set forth in RSA 400-A:15, or such other section of Title XXXVII as may be applicable, including, but not limited to RSA 420-J and RSA 417.
137-M:13 Death Certificate.
I. 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 chapter.
II. When a death has occurred in accordance with this chapter, the death shall be attributed to the underlying terminal disease.
III. Death following self-administering medications under that chapter alone does not constitute grounds for post-mortem inquiry.
IV. Death in accordance with this chapter shall not be designated suicide or homicide.
V. A qualified individual's act of self-administering medications prescribed pursuant to this chapter shall not be indicated on the death certificate.
VI. A coroner may conduct a preliminary investigation to determine whether an individual received a prescription for medications under this chapter.
2 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.
3 Effective Date. This act shall take effect January 1, 2025.

LBA
24-2049
11/24/23

HB 1283-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to end of life options.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
Revenue	$0	Indeterminable	Indeterminable	Indeterminable
Revenue Fund(s)	Insurance premium tax revenue			
Expenditures	$0	Under $3,000	Under $3,000	Under $3,000
Funding Source(s)	None			

Appropriations	$0	$0	$0	$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? [X] N/A
- Does this bill authorize new positions to implement this bill? [X] No

METHODOLOGY:

This bill establishes a procedure for individuals with terminal illnesses to receive medical assistance in dying through the self-administration of medicine. The Department of Insurance states that certain factors, such as the demand for medical assistance in dying and the availability and cost of medications, may impact premium rates charged by insurers. Any such change would have an indeterminable impact on insurance premium tax revenue received by the state.

The Department of Health and Human Services states that the cost of its responsibilities under the bill (compiling information on medical assistance in dying and issuing an annual statistical report), will have a fiscal impact of under $3,000 per year.

In addition, the bill modifies criminal penalties, and/or changes statute to which there is a penalty for violation. Therefore, this bill may have an impact on the judicial and correctional systems, which could affect prosecution, incarceration, probation, and parole costs, for the state, as well as county and local governments. A summary of such costs can be found at: https://gencourt.state.nh.us/lba/Budget/Fiscal_Notes/JudicialCorrectionalCosts.pdf

AGENCIES CONTACTED:

Department of Insurance, Department of Health & Human Services, Judicial Branch, Department of Corrections, Department of Justice, Judicial Council, New Hampshire Municipal Association, and New Hampshire Association of Counties

2024 SESSION

24-2228
05/10

HOUSE BILL ***1300***

AN ACT relative to terminal patients' right to try act.

SPONSORS: Rep. Lewicke, Hills. 36; Rep. Cushman, Hills. 28; Rep. Pauer, Hills. 36; Rep. Post, Hills. 42; Rep. Phillips, Rock. 7; Rep. Calabro, Hills. 45; Sen. Avard, Dist 12

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill revises the definition of eligible patient and terminal illness for purposes of the patient's right to try act, expands the criteria for informed consent, and removes references to the U.S. Food and Drug Administration for purposes of defining an investigational drug or device.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
24-2228
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to terminal patients' right to try act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Terminal Patients' Right to Try Act; Definition of Eligible Patient. Amend RSA 126-Z:1, I to read as follows:
I. "Eligible patient" means a person to whom all of the following apply:
(a) The person has a terminal illness [~~as determined by the person's physician and a consulting physician~~] ***for which there is no known or accepted curative option***.
(b) The person's physician has determined that the person has no comparable or satisfactory [~~United States Food and Drug Administration (FDA) approved~~] treatment options available to diagnose, monitor, or treat the disease or condition involved and that the probable risk to the person from the investigational drug, biological product, or device is not greater than the probable risk from the disease or condition.
(c) The person has received a prescription or recommendation from the person's physician for an investigational drug, biological product, or device.
(d) The person has given written informed consent for the use of the investigational drug, biological product, or device or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian has given written informed consent on the patient's

behalf. ***Written informed consent shall be given in the presence of 2 witnesses or a notary and shall be provided outside the presence of the prescribing doctor or staff. Consent shall include a patient's assessment of risks involved in treatment and shall include a waiver of legal liability for any adverse results from the treatment. Consent also may include an audio or video recording of the patient's statements.***

(e) The person has documentation from the person's physician that the person has met the requirements of this paragraph.

2 Terminal Patients' Right to Try Act; Definition of Terminal Illness. Amend RSA 126-Z:1, IV to read as follows:

IV. "Terminal illness" means a disease ***for which there is no presently available curative option and*** that, without life-sustaining procedures, will result in death [~~in the near future~~] or a state of permanent unconsciousness from which recovery is unlikely.

3 Liability of Physician; Exemption. Amend RSA 126-Z:3, I to read as follows:

I. Notwithstanding any provision of law to the contrary, ***no state licensing board, including*** the board of medicine***,*** [~~shall not revoke, fail to renew, or take any other action against a physician's license issued pursuant to RSA 329 based solely on a physician's recommendation to an eligible patient regarding or prescription for or treatment with an investigational drug, biological product, or device~~] ***shall take any action against a physician or other health care provider who has acted in good faith and within the provisions of this chapter***.

4 Repeal. RSA 126-Z:1, II, relative to the definition of investigational drug, biological product, or device, is repealed.

5 Effective Date. This act shall take effect January 1, 2025.