

HB 1325-FN – AS INTRODUCED

2014 SESSION

14-2528
01/04

HOUSE BILL ***1325-FN***

AN ACT relative to death with dignity for certain persons suffering from a terminal condition.

SPONSORS: Rep. Winters, Hills 18; Rep. Watrous, Merr 16; Rep. Michael Garcia, Hills 34; Rep. O'Flaherty, Hills 12

COMMITTEE: Judiciary

ANALYSIS

This bill allows a mentally competent person who is 18 years of age or older and who has been diagnosed as having a terminal condition by the patient's attending physician and a consulting physician to request a prescription for medication which will enable the patient to control the time, place, and manner of such patient's death.

Under this bill, the request is witnessed and signed in essentially the same manner as an advance directive. The bill requires the division of public health services, department of health and human services, to collect certain information and compile a statistical analysis of such information.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

1 VII. “Health care provider” means a person licensed, certified, or otherwise authorized or
2 permitted by the law of this state to administer health care in the ordinary course of business or
3 practice of a profession, and includes a health care facility.

4 VIII. “Informed decision” means a decision by a qualified patient, to request and obtain a
5 prescription to end the patient’s life in a humane and dignified manner, that is based on an
6 appreciation of the relevant facts and after being fully informed by the attending physician of the:

7 (a) Medical diagnosis.

8 (b) Prognosis.

9 (c) Potential risks associated with taking the medication to be prescribed.

10 (d) Probable result of taking the medication to be prescribed.

11 (e) Feasible alternatives, including, but not limited to, comfort care, hospice care,
12 palliative treatment, and pain control.

13 IX. “Medically confirmed” means the medical opinion of the attending physician has been
14 confirmed by a consulting physician who has examined the patient and the patient’s relevant
15 medical records.

16 X. “Patient” means a person who is under the care of a physician.

17 XI. “Physician” means a person licensed by this state to practice medicine or osteopathy.

18 XII. “Qualified patient” means a capable adult who is a resident of New Hampshire or is a
19 patient regularly treated in a New Hampshire health care facility and who has satisfied the
20 requirements of this chapter in order to obtain a prescription for medication to end the patient’s life
21 in a humane and dignified manner.

22 XIII. “Terminal condition” means an incurable and irreversible condition, for the end stage
23 for which there is no known treatment which will alter its course to death, and which, in the opinion
24 of the attending physician and consulting physician competent in that disease category, will result in
25 premature death.

26 137-L:3 Initiating a Written Request for Medication. An adult who is capable and a resident of
27 New Hampshire, or who is a patient regularly treated in a New Hampshire health care facility, and
28 who has been determined by the attending physician and consulting physician to be in a condition of
29 severe, unrelenting suffering from a terminal disease, and who has voluntarily expressed a wish to
30 die, may make a written request for medication for the purpose of ending such person’s life in a
31 humane and dignified manner in accordance with this chapter.

32 137-L:4 Form of the Written Request.

33 I. A valid request for medication under this chapter shall be in substantially the form
34 described in paragraph V of this section, signed and dated by the patient and witnessed by at least 2
35 individuals who, in the presence of the patient, attest that to the best of their knowledge and belief
36 the patient is capable, acting voluntarily, and is not being coerced to sign the request.

37 II. One of the witnesses shall be a person who is not:

- 1 (a) A relative of the patient by blood, marriage, or adoption;
- 2 (b) A person who at the time the request is signed would be entitled to any portion of the
- 3 estate of the qualified patient upon death under any will or by operation of law; or
- 4 (c) An owner, operator, or employee of a health care facility where the qualified patient
- 5 is receiving medical treatment or is a resident.

6 III. The patient’s attending physician at the time the request is signed shall not be a

7 witness.

8 IV. If the patient is a patient in a long term care facility at the time the written request is

9 made, one of the witnesses shall be an individual designated by the facility and having the

10 qualifications specified by the division.

11 V. REQUEST FOR MEDICATION

12 I,....., am an adult of sound mind. I am in a condition of severe, unrelenting

13 suffering from, which my attending physician has determined is a terminal disease

14 and which has been medically confirmed by a consulting physician. I have been fully informed of my

15 diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the

16 expected result, and the feasible alternatives, including comfort care, hospice care, palliative

17 treatment, and pain control. I request that my attending physician prescribe medication that will

18 end my life in a humane and dignified manner.

19 INITIAL ONE:

- 20 I have informed my family of my decision and taken their opinions into consideration.
- 21 I have decided not to inform my family of my decision.
- 22 I have no family to inform of my decision.
- 23 I understand that I have the right to rescind this request at any time.
- 24 I understand the full import of this request and I expect to die when I take the medication to be
- 25 prescribed.
- 26 I make this request voluntarily and without reservation, and I accept full moral responsibility for
- 27 my actions.

28 Signed:.....

29 Dated:.....

30 DECLARATION OF WITNESSES

31 We declare that the person signing this request:

- 32 (a) Is personally known to us or has provided proof of identity;
- 33 (b) Signed this request in our presence;
- 34 (c) Appears to be of sound mind and not under duress, fraud or undue influence; and
- 35 (d) Is not a patient for whom either of us is attending physician.

36Witness 1/Date

37Witness 2/Date

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1 Note: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this
2 request, shall not be entitled to any portion of the person's estate upon death, and shall not own,
3 operate, or be employed at a health care facility where the person is a patient or resident. If the
4 patient is an inpatient at a health care facility, one of the witnesses shall be an individual
5 designated by the facility.

6 137-L:5 Attending Physician Responsibilities. The attending physician shall:

7 I. Make the initial determination of whether a patient has a terminal disease and is in a
8 condition of severe, unrelenting suffering; is capable; and has made the request voluntarily.

9 II. Inform the patient of the:

10 (a) Medical diagnosis.

11 (b) Prognosis.

12 (c) Potential risks associated with taking the medication to be prescribed.

13 (d) Probable result of taking the medication to be prescribed.

14 (e) Feasible alternatives, including, but not limited to, comfort care, hospice care,
15 palliative treatment, and pain control.

16 III. Refer the patient to a consulting physician for medical confirmation of the diagnosis, and
17 for a determination that the patient is capable and acting voluntarily.

18 IV. Refer the patient for counseling, if appropriate, pursuant to RSA 137-L:7.

19 V. Request that the patient notify next of kin.

20 VI. Inform the patient that the patient has an opportunity to rescind the request at any time
21 and in any manner, and offer the patient an opportunity to rescind at the end of the 15-day waiting
22 period pursuant to RSA 137-L:9.

23 VII. Verify, immediately prior to writing the prescription for medication under this chapter,
24 that the patient is making an informed decision.

25 VIII. Fulfill the medical record documentation requirements of RSA 137-L:10.

26 IX. Ensure that all appropriate steps are carried out in accordance with this chapter prior to
27 writing a prescription for medication to enable a qualified patient to end the patient's life in a
28 humane and dignified manner.

29 137-L:6 Consulting Physician Confirmation. Before a patient is qualified under the chapter, a
30 consulting physician shall examine the patient and the patient's relevant medical records and
31 confirm, in writing, the attending physician's diagnosis that the patient is in a condition of severe,
32 unrelenting suffering from a terminal disease and verify that the patient is capable, is acting
33 voluntarily, and has made an informed decision.

34 137-L:7 Counseling Referral. If in the opinion of the attending physician or the consulting
35 physician a patient may be suffering from a psychiatric or psychological disorder, or depression
36 causing impaired judgment, either physician shall refer the patient for counseling. No medication to
37 end a patient's life in a humane and dignified manner shall be prescribed until the person

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1 performing the counseling determines that the patient is not suffering from a psychiatric or
2 psychological disorder, or depression or any physical disorder causing impaired judgment.

3 137-L:8 Informed Decision; Family Notification.

4 I. No person shall receive a prescription for medication to end such person's life in a humane
5 and dignified manner unless such person has made an informed decision as defined in RSA 137-L:2,
6 VIII. Immediately prior to writing a prescription for medication under this chapter, the attending
7 physician shall verify that the patient is making an informed decision.

8 II. The attending physician shall ask the patient to notify next of kin of the patient's request
9 for medication pursuant to this chapter. A patient who declines or is unable to notify next of kin
10 shall not have the patient's request denied for that reason.

11 137-L:9 Written and Oral Requests; Rescinding a Request; Waiting Periods.

12 I. In order to receive a prescription for medication to end a patient's life in a humane and
13 dignified manner, a qualified patient shall have made an oral request and a written request, and
14 reiterate the oral request to the patient's attending physician no fewer than 15 days after making
15 the initial oral request. At the time the qualified patient makes a second oral request, the attending
16 physician shall offer the patient an opportunity to rescind the request.

17 II. A patient may rescind such patient's request at any time and in any manner without
18 regard to the patient's mental state. No prescription for medication under this chapter may be
19 written without the attending physician offering the qualified patient an opportunity to rescind the
20 request.

21 III. No fewer than 15 days shall elapse between the patient's initial oral request and the
22 writing of a prescription under this chapter. No fewer than 48 hours shall elapse between the
23 patient's written request and the writing of a prescription under this chapter.

24 137-L:10 Medical Record Documentation Requirements. The following shall be documented or
25 filed in the patient's medical record:

26 I. All oral requests by a patient for medication to end such patient's life in a humane and
27 dignified manner.

28 II. All written requests by a patient for medication to end such patient's life in a humane
29 and dignified manner.

30 III. The attending physician's diagnosis and prognosis, determination that the patient is
31 capable, acting voluntarily, and has made an informed decision.

32 IV. The consulting physician's diagnosis, prognosis, and verification that the patient is
33 capable, acting voluntarily, and has made an informed decision.

34 V. A report of the outcome and determinations made during counseling, if performed.

35 VI. The attending physician's offer to the patient to rescind the patient's request at the time
36 of the patient's second oral request pursuant to RSA 137-L:9.

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1 VII. A note by the attending physician indicating that all requirements under this chapter
2 have been met and indicating the steps taken to carry out the request, including a notation of the
3 medication prescribed.

4 137-L:11 Applicability. This chapter shall apply only to requests made by New Hampshire
5 residents or requests by patients regularly treated in a New Hampshire health care facility.

6 137-L:12 Reporting; Rulemaking.

7 I. The division shall adopt rules relative to the collection of information required under this
8 chapter and relative to the qualifications of witnesses under RSA 137-L:4, IV. The information
9 collected shall not be a public record under RSA 91-A and shall not be made available for inspection
10 by the public.

11 II. The division shall annually review a sample of records maintained pursuant to this
12 chapter and shall generate and make available to the public an annual statistical report of the
13 information.

14 137-L:13 Exceptions.

15 I. No provision in a contract, will, or other agreement, whether written or oral, to the extent
16 the provision would affect whether a person may make or rescind a request for medication to end the
17 person's life in a humane and dignified manner, shall be valid.

18 II. No obligation owing under any currently existing contract shall be conditioned or affected
19 by the making or rescinding of a request, by a person, for medication to end such person's life in a
20 humane and dignified manner.

21 III. The sale, procurement, or issuance of any life, health, or accident insurance or annuity
22 policy or the rate charged for any policy shall not be conditioned upon or affected by the making or
23 rescinding of a request, by a person, for medication to end the person's life in a humane and dignified
24 manner. Neither shall a qualified patient's act of ingesting medication to end such patient's life in a
25 humane and dignified manner have an effect upon a life, health, or accident insurance or annuity
26 policy.

27 IV. Nothing in this chapter shall be construed to authorize a physician or any other person
28 to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in
29 accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy
30 killing, or homicide, under the law.

31 137-L:14 Immunities. Except as provided in RSA 137-L:15:

32 I. No person shall be subject to civil or criminal liability or professional disciplinary action
33 for participating in good faith compliance with this chapter. This includes being present when a
34 qualified patient takes the prescribed medication to end the patient's life in a humane and dignified
35 manner.

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1 II. No professional organization or association, or health care provider, may subject a person
2 to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other
3 penalty for participating or refusing to participate in good faith compliance with this chapter.

4 III. No request by a patient for or provision by an attending physician of medication in good
5 faith compliance with the provisions of this chapter shall constitute neglect for any purpose of law or
6 provide the sole basis for the appointment of a guardian or conservator.

7 IV. No health care provider shall be under any duty, whether by contract, by statute or by
8 any other legal requirement to participate in the provision to a qualified patient of medication to end
9 the patient's life in a humane and dignified manner. If a health care provider is unable or unwilling
10 to carry out a patient's request under this chapter, and the patient transfers such patient's care to a
11 new health care provider, the prior health care provider shall transfer, upon request, a copy of the
12 patient's relevant medical records to the new health care provider.

13 137-L:15 Liabilities.

14 I. A person who, without authorization of the patient, willfully alters or forges a request for
15 medication or conceals or destroys a rescission of that request with the intent or effect of causing the
16 patient's death shall be guilty of a class A felony.

17 II. A person who coerces or exerts undue influence on a patient to request medication for the
18 purpose of ending the patient's life or to destroy a rescission of such a request shall be guilty of a
19 class A felony.

20 III. Nothing in this chapter limits further liability for civil damages resulting from other
21 negligent conduct or intentional misconduct by any person.

22 IV. The penalties in this chapter do not preclude criminal penalties applicable under other
23 law for conduct which is inconsistent with the provisions of this chapter.

24 137-L:16 Severability. If any provision of this chapter or the application thereof to any person or
25 circumstance is held invalid, the invalidity does not affect other provisions or applications of the
26 chapter which can be given effect without the invalid provisions or applications, and to this end the
27 provisions of this chapter are severable.

28 2 Effective Date. This act shall take effect January 1, 2015.

HB 1325-FN - FISCAL NOTE

AN ACT relative to death with dignity for certain persons suffering from a terminal condition.

FISCAL IMPACT:

The Judicial Branch, the Judicial Council, the New Hampshire Association of Counties, and the Departments of Justice, Corrections and Health and Human Services state this bill, **as introduced**, will increase state and county expenditures by indeterminable amounts in FY 2015 and in each year thereafter. There will be no fiscal impact state, county, or local revenues or local expenditures.

METHODOLOGY:

The Judicial Branch states this bill would establish class A felonies for altering or forging a request for medication with the intent of causing the patient's death and for coercing or exerting undue influence on a patient to request medication for the purpose of ending the patient's life. The Branch states the case cost estimates are based on data that is more than eight years old and does not reflect the changes to the courts over that same period of time or the impact these changes may have on the processing of these types of cases. The Branch states the cost of an average routine criminal case in the superior court is \$425.27 in FY 2015, and \$433.34 in FY 2016 and each year thereafter. The Branch has no information to estimate how many charges would be brought as a result of the changes contained in the bill to determine the fiscal impact on expenditures. However, if a single case were to be appealed to the New Hampshire Supreme Court, the fiscal impact would be in excess of \$10,000.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states if an individual is found to be indigent, the flat fee of \$756.24 per felony is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge and \$4,100 for a felony charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal. The Council states there are sufficient attorney services such that an

addition of one or two class A felony cases over the course of a year would not create pressure on the appropriations to the Public Defender Program.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2012 was \$35,071. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2012 was \$608.

The Department of Justice states the criminal offense created by the bill would typically be prosecuted by a local prosecutor or county attorney's office. Any fiscal impact to the Department of Justice in instances when an appeal would be taken to the Supreme Court from an enforcement action would be absorbed using existing resources. The Department states it is also possible that allegations of violations would generate complaints before a professional licensing board. If the Administrative Prosecutions Unit investigates and prosecutes such complaints the services of an Assistance Attorney General, an investigator, and a paralegal would be needed to prosecute the administrative violations. The Department is unable to estimate how many cases would be investigated and prosecuted.

The New Hampshire Association of Counties states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Department of Health and Human Services states this bill allows a mentally competent person who is 18 years of age or older and who has been diagnosed with a terminal condition to request a prescription for medication which will enable the patient to control the time place a manner of such patient's death. The Department states the bill would require the department to collect certain information, compile a statistical analysis, and prepare and make public an annual statistical report of the information. In addition, the Department shall adopt rules relative to the collection of the information and qualifications of witnesses under RSA 137-L:4, IV. The Department assumes there would be an initial effort to design the necessary forms to record and receive the information, to develop a database, and train personnel in data collection and entry. The Department assumes a part-time Planning Analyst (labor grade 24) would perform the initial development work and the ongoing data collection, data entry and annual

report creation. In addition, the Department expects the new position would require a computer and software, office furniture, and funds for operating expenses including travel throughout the state to perform physician and hospital audits and data validation. The Department estimates the costs as follows:

	FY 2015	FY 2016	FY 2017	FY 2018
Salary (Planning Analyst, LG 24 @ 18.75 hours / week)	\$11,359	\$23,712	\$24,755	\$25,847
Benefits (Social Security and Medicare)	\$869	\$1,814	\$1,894	\$1,977
Current Expense (Supplies, postage and telephone)	\$1,000	\$2,000	\$2,000	\$2,000
Equipment	\$3,500	0	0	0
In-State Travel	\$500	\$1,000	\$1,000	\$1,000
Office Rent	<u>\$3,732</u>	<u>\$7,978</u>	<u>\$8,217</u>	<u>\$8,463</u>
Total:	\$20,960	\$36,504	\$37,866	\$39,287