

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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

3 CHAPTER 137-M

4 END OF LIFE OPTIONS

5 137-M:1 Definitions. In this chapter, unless the context otherwise requires, the following
6 definitions shall apply:

7 I. "Adult" means an individual 18 years of age or older.

8 II. "Mental capability" means an individual's ability to understand and appreciate health
9 care options available to that individual, including significant benefits and risks, and to make and
10 communicate an informed health care decision. A determination of capacity shall be made only
11 according to professional standards of care and the provisions of RSA 137-J.

12 III. "Health care entity" means an entity or institution, other than an individual, that is
13 licensed to provide any form of health care in the state, including a hospital, clinic, hospice agency,
14 home health agency, long-term care facility, pharmacy, group medical practice, or any similar entity.

15 IV. "Health care provider" means any of the following individuals authorized by law to
16 prescribe medications to be used in medical assistance in dying:

17 (a) A physician licensed pursuant to RSA 329;

18 (b) An osteopathic physician licensed pursuant to RSA 329;

19 (c) An advanced practice registered nurse licensed pursuant to RSA 326-B; or

20 (d) A physician assistant licensed pursuant to RSA 328-D.

21 V. "Informed decision" means a decision by a mentally competent individual to request and
22 obtain a prescription for medications pursuant to this chapter, that the qualified individual may self-
23 administer to bring about a peaceful death, after being fully informed by the prescribing provider
24 and consulting provider of:

25 (a) The individual's diagnosis and prognosis;

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

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

28 (d) The feasible end-of-life care and treatment options for the individual's terminal
29 condition, including, but not limited to comfort care, palliative care, hospice care, and pain control,
30 and the risks and benefits of each; and

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

3 VI. "Medical assistance in dying" means the practice wherein a health care provider
4 evaluates a request, determines qualification, performs the duties described in RSA 137-M:6 and
5 137-M:7 and prescribes medications to a qualified individual who may self-administer the
6 medications to bring about a peaceful death.

7 VII. "Mental health professional" means a state-licensed psychiatrist, psychologist, master
8 social worker, psychiatric nurse practitioner or professional clinical mental health counselor.

9 VIII. "Prescribing health care provider" means a health care provider who is qualified by
10 specialty or experience to make a professional diagnosis and prognosis regarding the individual's
11 disease, and prescribes medical assistance-in-dying medication.

12 IX. "Consulting health care provider" means a health care provider who is qualified by
13 specialty or experience to make a professional diagnosis and prognosis regarding the individual's
14 disease.

15 X. "Qualified individual" means an individual who has met the requirements to receive
16 medical assistance in dying pursuant to the provisions of this chapter.

17 XI. "Self-administer" means taking an affirmative, conscious, voluntary action to take the
18 prescribed medications.

19 XII. "Terminal" means a condition that is incurable and irreversible and will result in death.

20 XIII. "Prognosis of 6 months or less" means the terminal condition will, within reasonable
21 medical judgment, result in death within 6 months.

22 137-M:2 Prescribing Health Care Provider Determination; Patient Form. A prescribing health
23 care provider may provide a prescription for medical-assistance-in-dying medications to an
24 individual only after the prescribing health care provider has:

25 I. Determined that the individual has:

- 26 (a) Mental capability;
27 (b) A terminal condition;
28 (c) Prognosis of 6 months or less, or hospice eligible;
29 (d) Voluntarily made the request for medical assistance in dying; and
30 (e) The ability to self-administer the medical assistance in dying medications.

31 II. Determined that the individual is making an informed decision after discussing with the
32 individual:

- 33 (a) The individual's medical diagnosis and prognosis;
34 (b) The potential risks associated with self-administering the medical assistance in
35 dying medications that the individual has requested the health care provider to prescribe;
36 (c) The probable result of self-administering the medical assistance in dying medications
37 to be prescribed;

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1 (d) The individual's option of choosing to obtain the medical-assistance-in-dying
2 medications and then deciding not to use them; and

3 (e) The feasible alternatives, including condition-directed treatment options, as well as
4 hospice care and palliative care focused on relieving symptoms and reducing suffering.

5 III. Determined in good faith that the individual's request does not arise from coercion or
6 undue influence by another person, institution, or other party.

7 IV. Noted in the individual's health record the prescribing health care provider's
8 determination that the individual qualifies to receive medical assistance in dying.

9 V. Confirmed and recorded in the individual's health record that at least one licensed
10 physician, osteopathic physician, advanced practice registered nurse, or physician assistant has
11 determined, after conducting an appropriate examination, that the individual has capacity, a
12 terminal condition, and the ability to self-administer the medical assistance-in-dying medications.
13 That person may be the prescribing health care provider pursuant to this section, the individual's
14 hospice health care provider, or another health care provider who meets the requirements of this
15 section.

16 VI.(a) Affirmed that the individual is either:

17 (1) Enrolled in a Medicare-certified hospice program; or

18 (2) Eligible to receive medical assistance in dying after the prescribing health care
19 provider has referred the individual to a consulting health care provider.

20 (b) And that the consulting health care provider has:

21 (1) Examined the individual;

22 (2) Reviewed the individual's relevant medical records; and

23 (3) Confirmed, in writing, the prescribing health care provider's determination that
24 the individual is suffering from a terminal illness, meets the requirements for capacity and self-
25 administration, and is making an informed decision, pursuant to this chapter.

26 VII. Provided substantially the following form to the individual and enters the form into the
27 individual's health record after the form has been completed with all of the required signatures and
28 initials:

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

30 I, (patient name), am an adult of sound mind. I am suffering from a terminal condition that is
31 incurable and irreversible and that, according to reasonable medical judgment, will result in my
32 death within 6 months. My health care provider has determined that the condition is in its terminal
33 phase. (Patient Initials)

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

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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.

1 II. If the licensed mental health provider determines that the individual is not mentally
2 competent, the individual shall not be deemed a qualified individual and the attending provider shall
3 not prescribe medication to the individual under this chapter.

4 137-M:5 Waiting Period. A prescription for medical-assistance-in-dying medications shall:

5 I. Not be filled until 48 hours after the prescription for medical assistance in dying
6 medications has been written, unless the qualified individual's prescribing health care provider has
7 medically confirmed that the qualified individual may, within reasonable medical judgment, die
8 before the expiration of the waiting period identified herein, in which case, the prescription may be
9 filled once the prescribing health care provider affirms that all requirements have been fulfilled
10 pursuant to RSA 137-M:2; and

11 II. Indicate the date and time that the prescription for medical assistance in dying
12 medications was written and indicate the first allowable date and time when it may be filled.

13 137-M:6 Eligibility and Due Diligence.

14 I. A mentally competent individual that meets the criteria in RSA 137-M:2 is eligible to
15 request a prescription for medications under this chapter. The individual may make the requests in
16 person or via tele health pursuant to RSA 167:4-d.

17 II. The prescribing and consulting providers of an eligible individual shall have met all the
18 requirements of RSA 137-M:2 and 137-M:6.

19 III. At the time of the second consultation, the consulting health care provider shall offer the
20 individual an opportunity to rescind the request.

21 IV. Requests for medical assistance in dying may be made only by the eligible individual and
22 shall not be made by the individual's surrogate decision-maker, health care proxy, attorney-in-fact
23 for healthcare, nor via advance healthcare directive.

24 V. If a requesting individual decides to transfer care to an alternative provider, the records
25 custodian shall transfer all relevant medical records within 2 business days, including written
26 documentation of the dates of the individual's request concerning medical assistance in dying.

27 137-M:7 Right to Know. A health care provider shall inform a terminally ill patient of all
28 reasonable options related to the patient's care that are legally available to terminally ill patients
29 that meet the medical standards of care for end-of-life care.

30 137-M:8 Immunities and Conscience-based Decisions.

31 I. A person shall not be subject to criminal liability, civil liability, licensing sanctions, or
32 other professional disciplinary action for:

33 (a) Participating in medical assistance in dying in good faith compliance with the
34 provisions of the chapter.

35 (b) Being present when a qualified patient self-administers the prescribed medical
36 assistance in dying medications to end the qualified individual's life in accordance with the
37 provisions of this chapter.

1 (c) Refusing, for reasons of conscience, includes refusing to provide information on
2 medical assistance in dying to a patient and refusing to refer a patient to any entity or individual
3 who is able and willing to assist the patient in obtaining medical assistance in dying. A party who
4 for reasons of conscience expects to refuse to participate in any part of the chapter shall so inform
5 the qualified individual at or before the time of their request.

6 II. A health care entity, health insurer, managed care organization or health care provider
7 shall not subject a person to censure, discipline, suspension, loss or denial of license, credential,
8 privileges or membership or other penalty for participating, or refusing to participate, in the
9 provision of medical assistance in dying in good faith compliance with the provisions of this chapter.

10 III. No health care provider who objects for reasons of conscience to participating in the
11 provision of medical assistance in dying shall be required to participate in the provision of assistance
12 in dying under any circumstance. If a health care provider is unable or unwilling to carry out an
13 individual's request pursuant to the chapter, that health care provider shall so inform the individual
14 at the time of the request and may refer the individual to a health care provider who is able and
15 willing to carry out the individual's request or to another individual or entity to assist the requesting
16 individual in seeking medical assistance in dying. The prior health care provider shall transfer,
17 upon request, a copy of the individual's relevant medical records to the new health care provider.

18 IV. A health care entity shall not forbid nor otherwise sanction a health care provider who
19 provides medical assistance in dying in accordance with the chapter off the premises of the health
20 care entity or when the health care provider is not acting within the normal course and scope of the
21 health care provider's employment with the health care entity.

22 V. A health care entity may sanction a health care provider for participating in medical
23 assistance in dying on the premises of the prohibiting health care entity only if the health care entity
24 has given written notice to the health care provider of the prohibiting entity's written policy
25 forbidding participation in medical assistance in dying and the health care provider participates in
26 medical assistance in dying:

- 27 (a) On the premises of the health care entity; or
28 (b) Within the course and scope of the health care provider's employment for the health
29 care entity.

30 VI. Nothing in this section shall be construed to prevent:

31 (a) A health care provider from participating in medical assistance in dying while the
32 health care provider is acting outside the health care entity's premises or outside the course and
33 scope of the health care provider's capacity as an employee; or

34 (b) An individual who seeks medical assistance in dying from contracting with the
35 individual's prescribing health care provider or consulting health care provider to act outside the
36 course and scope of the provider's affiliation with the sanctioning health care entity.

1 VII. Participating, or not participating, in medical assistance in dying shall not be the basis
2 for a report of unprofessional conduct.

3 VIII. A health care entity that prohibits medical assistance in dying shall accurately and
4 clearly articulate this in an appropriate location on any website maintained by the entity and in any
5 appropriate materials given to patients to whom the health care entity provides health care.

6 137-M:9 Prohibited Acts.

7 I. Nothing in the chapter shall be construed to authorize a physician or any other person to
8 end an individual's life by lethal injection, mercy killing, or euthanasia. Actions taken in accordance
9 with this chapter shall not be construed, for any purpose, to constitute suicide, assisted suicide,
10 euthanasia, mercy killing, homicide, or adult abuse under the law.

11 II. Notwithstanding any other law, a person shall not be subject to civil or criminal liability
12 solely because the person was present when the qualified individual self-administers the prescribed
13 assistance-in-dying drug. A person who is present may, without civil or criminal liability, or any
14 discipline for professional licensees, assist the qualified individual by preparing the assistance-in-
15 dying drug.

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

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

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

23 (c) Concealing or destroying a qualified individual's terminal prescription without the
24 qualified individual's authorization, or preventing a qualified individual from self-administering the
25 terminal prescription.

26 (d) Coercing or exerting undue influence on a qualified individual to request or to self-
27 administer a terminal prescription for the purpose of ending the qualified individual's life.

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

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

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

34 137-M:10 Reporting.

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

1 A, that establish the time frames and forms for reporting pursuant to this section and shall limit the
2 reporting of data relating to qualified individuals who received prescriptions for medical assistance
3 in dying medications to the following:

- 4 (a) The qualified individual's age at death;
- 5 (b) The qualified individual's race and ethnicity;
- 6 (c) The qualified individual's gender;
- 7 (d) Whether the qualified individual was enrolled in hospice prior to or at the time of
8 death;
- 9 (e) The qualified individual's underlying medical condition; and
- 10 (f) Whether the qualified individual self-administered the medical assistance in dying
11 medications and, if so, the date that this occurred.

12 II. The department of health and human services shall promulgate an annual statistical
13 report, containing aggregated data, on the information collected pursuant to paragraph I on the total
14 number of medical assistance in dying medications prescriptions written statewide and on the
15 number of health care providers who have issued prescriptions for medical assistance in dying
16 medications during that year. Data reported pursuant to this section shall not contain individually
17 identifiable health information and are exempt from disclosure pursuant to the Inspection of Public
18 Records Act.

19 137-M:11 Effect on Construction of Wills, Contracts, and Statutes.

20 I. No provision in a contract, will, or other agreement, whether written or oral, that would
21 determine whether an individual may make or rescind a request pursuant to this chapter is valid.

22 II. No obligation owing under any currently existing contract shall be conditioned or affected
23 by an individual's act of making or rescinding a request pursuant to this chapter.

24 III. It is unlawful for an insurer to deny or alter healthcare benefits otherwise available to
25 an individual with a terminal disease based on the availability of medical assistance in dying or
26 otherwise attempt to coerce an individual with a terminal disease to make a request for medical
27 assistance-in-dying medications.

28 137-M:12 Insurance and Annuity Policies.

29 I. The sale, procurement, or issuance of a life, health, or accident insurance; annuity policy;
30 or the rate charged for a policy shall not be conditioned upon or affected by an individual's act of
31 making or rescinding a request for medications pursuant to this chapter.

32 II. A qualified individual's act of self-administering medications pursuant to this chapter
33 does not invalidate any part of a life, health, or accident insurance, or annuity policy.

34 III. No insurer shall deny or alter benefits to an individual with a terminal disease, who is a
35 covered beneficiary of a health insurance plan, based on the availability of medical assistance in
36 dying, his or her request for medications pursuant to this chapter, or the absence of a request for
37 medications pursuant to this chapter.

1 IV. Any insurer in violation of this section shall be subject to the penalties set forth in RSA
2 400-A:15, or such other section of Title XXXVII as may be applicable, including, but not limited to
3 RSA 420-J and RSA 417.

4 137-M:13 Death Certificate.

5 I. Unless otherwise prohibited by law, the prescribing provider may sign the death
6 certificate of a qualified individual who obtained and self-administered a prescription for
7 medications pursuant to this chapter.

8 II. When a death has occurred in accordance with this chapter, the death shall be attributed
9 to the underlying terminal disease.

10 III. Death following self-administering medications under that chapter alone does not
11 constitute grounds for post-mortem inquiry.

12 IV. Death in accordance with this chapter shall not be designated suicide or homicide.

13 V. A qualified individual's act of self-administering medications prescribed pursuant to this
14 chapter shall not be indicated on the death certificate.

15 VI. A coroner may conduct a preliminary investigation to determine whether an individual
16 received a prescription for medications under this chapter.

17 2 Severability. If a part of this act is invalid, all valid parts that are severable from the invalid
18 part remain in effect. If a part of this act is invalid in one or more of its applications, the part
19 remains in effect in all valid applications that are severable from the invalid applications.

20 3 Effective Date. This act shall take effect January 1, 2025.

**HB 1283-FN- FISCAL NOTE
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AN ACT relative to end of life options.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

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

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ N/A
- Does this bill authorize new positions to implement this bill? ☒ 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