

HB 1659-FN - AS INTRODUCED

2020 SESSION

20-2036  
01/10

HOUSE BILL            ***1659-FN***

AN ACT                relative to patient directed care and patient's rights with regard to end-of-life decisions.

SPONSORS:            Rep. Sandler, Straf. 21; Rep. Vincent, Straf. 17; Rep. Frost, Straf. 16; Rep. Saunderson, Merr. 9; Rep. Towne, Straf. 4; Rep. Bartlett, Merr. 19; Rep. Cannon, Straf. 18; Rep. Woods, Merr. 23; Sen. Hennessey, Dist 5

COMMITTEE:          Judiciary

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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 disease 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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to patient directed care and patient's rights with regard to end-of-life decisions.

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

1 1 New Chapter; Death With Dignity Act. Amend RSA by inserting after chapter 137-L the  
2 following new chapter:

3 CHAPTER 137-M

4 DEATH WITH DIGNITY ACT

5 137-M:1 Statement of Purpose. The state of New Hampshire recognizes that persons have a  
6 right, founded in the autonomy of the person, to control the decisions relating to the rendering of  
7 their own medical care. The state of New Hampshire further recognizes that medical care for  
8 terminally ill patients who are capable of making informed decisions during the time of their illness  
9 includes the right, with assistance from their physicians, to choose to die with dignity. Many  
10 terminally ill patients experience severe, unrelenting suffering, mental anguish over the prospect of  
11 losing control and independence, and/or embarrassing indignities for long periods while they are  
12 waiting to die from terminal illness. To remedy these situations the state of New Hampshire hereby  
13 declares that the laws of the state shall permit a licensed physician, upon written request of a  
14 terminally ill patient in a condition of severe, unrelenting suffering, to provide such patient with a  
15 prescription for lethal medication which will allow the patient, if the patient chooses to do so, to self-  
16 administer and thus control the time, place, and manner of death.

17 137-M:2 Definitions. In this chapter:

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

19 II. "Attending physician" means the physician who has primary responsibility for treatment  
20 and care of the patient's terminal disease.

21 III. "Capable" means that, in the opinion of a court or in the opinion of the patient's  
22 attending physician or consulting physician, a patient has the ability to make and communicate  
23 health care decisions to health care providers, including communication through persons familiar  
24 with the patient's manner of communicating if those persons are available.

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

27 V. "Counseling" means a consultation between a licensed psychiatrist or psychologist and a  
28 patient for the purpose of determining whether the patient is suffering from a psychiatric or  
29 psychological disorder or depression causing impaired judgment.

1 VI. "Division" means the division of public health services, department of health and human  
2 services.

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

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

9 (a) Medical diagnosis.

10 (b) Prognosis.

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

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

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

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

18 X. "Patient" means a person who is under the care of a physician.

19 XI. "Physician" means a person licensed by this state to practice medicine or osteopathy.

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

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

26 137-M:3 Initiating a Written Request for Medication.

27 I. An adult who is capable and a resident of New Hampshire, or who is a patient regularly  
28 treated in a New Hampshire health care facility, and who has been determined by the attending  
29 physician and consulting physician to be suffering from a terminal disease, and who has voluntarily  
30 expressed a wish to die, may make a written request for medication for the purpose of ending such  
31 person's life in a humane and dignified manner in accordance with this chapter.

32 II. No person shall be a qualified patient under the provisions of this chapter solely because  
33 of age or disability.

34 III. No person or agency including a legal guardian or agent under a durable health care  
35 power of attorney, shall be authorized to make a request for medication pursuant to this chapter on  
36 behalf of a patient who is not capable.

37 137-M:4 Form of the Written Request.

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1           I. A valid request for medication under this chapter shall be in substantially the form  
2 described in paragraph IV of this section, signed and dated by the patient and witnessed by at least  
3 2 individuals who, in the presence of the patient, attest that to the best of their knowledge and belief  
4 the patient is capable, acting voluntarily, and is not being coerced to sign the request.

5           II. The witnesses signing the request executed under paragraph I shall not be:

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

7               (b) A person who at the time the request is signed would be entitled to any portion of the  
8 estate of the qualified patient upon death under any will or by operation of law; or

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

11           III. The patient's attending physician at the time the request is signed shall not be a  
12 witness.

13           IV. REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED  
14 MANNER

15 I, \_\_\_\_\_, am an adult of sound mind.

16 I am suffering from \_\_\_\_\_, which my attending physician has determined is a  
17 terminal disease and which has been medically confirmed by a consulting physician. I have been  
18 fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential  
19 associated risks, the expected result, and the feasible alternatives, including comfort care, hospice  
20 care, and pain control.

21 I request that my attending physician prescribe medication that will end my life in a humane and  
22 dignified manner.

23 INITIAL ONE:

24 \_\_\_ I have informed my family of my decision and taken their opinions into consideration.

25 \_\_\_ I have decided not to inform my family of my decision.

26 \_\_\_ I have no family to inform of my decision.

27 \_\_\_ I understand that I have the right to rescind this request at any time.

28 \_\_\_ I understand the full import of this request and I expect to die when I take the medication to be  
29 prescribed. I further understand that although most deaths occur within 3 hours, my death may  
30 take longer and my physician has counseled me about this possibility.

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

33 Signed: \_\_\_\_\_

34 Dated: \_\_\_\_\_

35 DECLARATION OF WITNESSES

36 We declare that the person signing this request:

37           (a) Is personally known to us or has provided proof of identity:

- 1 (b) Signed this request in our presence;
- 2 (c) Appears to be of sound mind and not under duress, fraud, or undue influence;
- 3 (d) Is not a patient for whom either of us is attending physician.

4 \_\_\_\_\_ Witness 1/Date

5 \_\_\_\_\_ Witness 2/Date

6 NOTE: No witness shall be a relative (by blood, marriage, or adoption) of the person signing this  
7 request, entitled to any portion of the person's estate upon death, or own, operate, or be employed at  
8 a health care facility where the person is a patient or resident.

9 137-M:5 Attending Physician Responsibilities. The attending physician shall:

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

12 II. Inform the patient of the:

13 (a) Medical diagnosis.

14 (b) Prognosis.

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

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

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

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

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

22 V. Recommend that the patient notify next of kin.

23 VI. Counsel the patient about the importance of having another person present when the  
24 patient takes the medication prescribed pursuant to this chapter and of not taking the medication in  
25 a public place.

26 VII. Inform the patient that the patient has an opportunity to rescind the request at any  
27 time and in any manner, and offer the patient an opportunity to rescind at the end of the 15-day  
28 waiting period pursuant to RSA 137-M:9.

29 VIII. Verify, immediately prior to writing the prescription for medication under this chapter,  
30 that the patient is making an informed decision.

31 IX. Fulfill the medical record documentation requirements of RSA 137-M:10.

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

35 137-M:6 Consulting Physician Confirmation. Before a patient is qualified under this chapter, a  
36 consulting physician shall examine the patient and the patient's relevant medical records and  
37 confirm, in writing, the attending physician's diagnosis that the patient is in a condition of severe,

1 unrelenting suffering from a terminal disease and verify that the patient is capable, is acting  
2 voluntarily, and has made an informed decision.

3 137-M:7 Counseling Referral. If in the opinion of the attending physician or the consulting  
4 physician a patient may be suffering from a psychiatric or psychological disorder, or depression  
5 causing impaired judgment, either physician shall refer the patient for counseling. No medication to  
6 end a patient's life in a humane and dignified manner shall be prescribed until the person  
7 performing the counseling determines that the patient is not suffering from a psychiatric or  
8 psychological disorder, or depression or any physical disorder causing impaired judgment.

9 137-M:8 Informed Decision; Family Notification.

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

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

17 137-M:9 Written and Oral Requests; Rescinding a Request; Waiting Periods.

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

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

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

30 137-M:10 Medical Record Documentation Requirements. The following shall be documented or  
31 filed in the patient's medical record:

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

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

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

1           IV. The consulting physician’s diagnosis, prognosis, and verification that the patient is  
2 capable, acting voluntarily, and has made an informed decision.

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

4           VI. The attending physician’s offer to the patient to rescind the patient’s request at the time  
5 of the patient’s second oral request pursuant to RSA 137-M:9.

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

9           137-M:11 Applicability. This chapter shall apply only to requests made by New Hampshire  
10 residents or requests by patients regularly treated in a New Hampshire health care facility.

11           137-M:12 Reporting; Rulemaking.

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

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

19           137-M:13 Exceptions.

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

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

26           III. The sale, procurement, or issuance of any life, health, or accident insurance or annuity  
27 policy or the rate charged for any policy shall not be conditioned upon or affected by the making or  
28 rescinding of a request, by a person, for medication to end the person’s life in a humane and dignified  
29 manner. Neither shall a qualified patient’s act of ingesting medication to end such patient’s life in a  
30 humane and dignified manner have an effect upon a life, health, or accident insurance or annuity  
31 policy. The rights and obligations of insurers shall not be otherwise altered by this chapter.

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

36           137-M:14 Immunities. Except as provided in RSA 137-M:15:

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

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

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

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

17           137-M:15 Liabilities.

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

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

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

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

28           137-M:16 Severability. If any provision of this chapter or the application thereof to any person  
29 or circumstance is held invalid, the invalidity does not affect other provisions or applications of the  
30 chapter which can be given effect without the invalid provisions or applications, and to this end the  
31 provisions of this chapter are severable.

32           2 Effective Date. This act shall take effect January 1, 2021.

**HB 1659-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to patient directed care and patient's rights with regard to end-of-life decisions.

**FISCAL IMPACT:**     State                     County                     Local                     None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable

**METHODOLOGY:**

This bill allows and establishes protocols for a mentally competent adult who has been diagnosed with a terminal disease to request a prescription for medication to control the time, place, and manner of their death. The bill requires the Department of Health and Human Services to: adopt a set of rules for the collection of information; review a sample of records on an annual basis; and prepare an annual statistical report and make it available to the public. The Department is not able to estimate the number of individuals who will choose to follow the end-of-life protocols established in the bill, and therefore cannot estimate the number of records to be reviewed or included in the annual report. The Department estimates that a 0.5 full-time equivalent (FTE) will be needed to implement the bill's provisions. Costs for the position are shown below, and assume the position will be in place for only the second half of FY 2021, as the bill has an effective date of January 1, 2021.

	FY 2021	FY 2022	FY 2023
<b>Program Specialist II (LG 19)</b>			
Salary	\$39,700	\$41,300	\$43,100
Benefits	\$27,000	\$28,400	\$29,800
Position Total	\$66,700	\$69,700	\$72,900
Number of Positions	0.25	0.50	0.50
<b>Total Cost</b>	<b>\$16,680</b>	<b>\$34,850</b>	<b>\$36,450</b>

In addition to the costs shown above, this bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Routine Criminal Felony Case	\$484	\$498
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Contract Attorney – Felony	\$825/Case	\$825/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2019 Average Cost of Incarcerating an Individual	\$44,400	\$44,400
FY 2019 Annual Marginal Cost of a General Population Inmate	\$5,071	\$5,071
FY 2019 Average Cost of Supervising an Individual on Parole/Probation	\$576	\$576
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

**AGENCIES CONTACTED:**

Departments of Health and Human Services, Justice, and Corrections, Judicial Branch, and  
Judicial Council