

**HB 513-FN – AS INTRODUCED**

2011 SESSION

11-0297

01/09

**HOUSE BILL 513-FN**

AN ACT relative to end of life aid in dying for certain persons suffering from a terminal disease.

SPONSORS: Rep. Weed, Ches 3; Rep. Parkhurst, Ches 4; Rep. Vaillancourt, Hills 15

COMMITTEE: Health, Human Services and Elderly Affairs

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

11-0297

01/09

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT relative to end of life aid in dying for certain persons suffering from a terminal disease.

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

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

CHAPTER 137-L

DEATH WITH DIGNITY ACT

137-L:1 Statement of Purpose. The state of New Hampshire recognizes that persons have a right, founded in the autonomy of the person, to control the decisions relating to the rendering of their own medical care. The state of New Hampshire further recognizes that medical care for terminally ill patients who are capable of making informed decisions during the time of their illness includes the right, with assistance from their physicians, to choose to die with

dignity. Many terminally ill patients experience severe, unrelenting suffering, mental anguish over the prospect of losing control and independence, and/or embarrassing indignities for long periods while they are waiting to die from terminal illness. To remedy these situations the state of New Hampshire hereby declares that the laws of the state shall permit a licensed physician, upon written request of a terminally ill patient in a condition of severe, unrelenting suffering, to provide such patient with a prescription for lethal medication which will allow the patient, if the patient chooses to do so, to self-administer and thus control the time, place, and manner of death.

137-L:2 Definitions. In this chapter:

- I. "Adult" means an individual who is 18 years of age or older.
- II. "Attending physician" means the physician who has primary responsibility for treatment and care of the patient's terminal disease.
- III. "Capable" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.
- IV. "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.
- V. "Counseling" means a consultation between a licensed psychiatrist or certified psychologist and a patient for the purpose of determining whether the patient is suffering from a psychiatric or psychological disorder or depression causing impaired judgment.
- VI. "Division" means the division of public health services, department of health and human services.
- VII. "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.
- VIII. "Informed decision" means a decision by a qualified patient, to request and obtain a prescription to end the patient's life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of the:
  - (a) Medical diagnosis.
  - (b) Prognosis.
  - (c) Potential risks associated with taking the medication to be prescribed.
  - (d) Probable result of taking the medication to be prescribed.
  - (e) Feasible alternatives, including, but not limited to, comfort care, hospice care, palliative treatment, and pain control.
- IX. "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.
- X. "Patient" means a person who is under the care of a physician.
- XI. "Physician" means a person licensed by this state to practice medicine or osteopathy.
- XII. "Qualified patient" means a capable adult who is a resident of New Hampshire or is a patient regularly treated in a New Hampshire health care facility and who has satisfied the requirements of this chapter in order to obtain a prescription for medication to end the patient's life in a humane and dignified manner.

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

137-L:3 Initiating a Written Request for Medication.

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

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

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

137-L:4 Form of the Written Request.

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

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

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

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

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

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

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

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

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

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

INITIAL ONE:

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

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

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

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

\_\_\_ I understand the full import of this request and I expect to die when I take the

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

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

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

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

**DECLARATION OF WITNESSES**

We declare that the person signing this request:

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

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

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

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

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

- I. Make the initial determination of whether a patient has a terminal disease and is in a condition of severe, unrelenting suffering; is capable; and has made the request voluntarily.
- II. Inform the patient of the:
  - (a) Medical diagnosis.
  - (b) Prognosis.
  - (c) Potential risks associated with taking the medication to be prescribed.
  - (d) Probable result of taking the medication to be prescribed.
  - (e) Feasible alternatives, including, but not limited to, comfort care, hospice care, palliative treatment, and pain control.
- III. Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily.
- IV. Refer the patient for counseling, if appropriate, pursuant to RSA 137-L:7.
- V. Recommend that the patient notify next of kin.
- VI. Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to this chapter and of not taking the medication in a public place.

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

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

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

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

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

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

137-L:8 Informed Decision; Family Notification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

137-L:12 Reporting; Rulemaking.

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

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

137-L:13 Exceptions.

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

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

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

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

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

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

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

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

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

#### 137-L:15 Liabilities.

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

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

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

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

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

2 Effective Date. This act shall take effect January 1, 2012.

LBAO

11-0297

Revised 02/07/11

### **HB 513 FISCAL NOTE**

AN ACT relative to end of life aid in dying for certain persons suffering from a terminal disease.

#### **FISCAL IMPACT:**

The Judicial Branch, Judicial Council, the Departments of Health and Human Services and Corrections, and the New Hampshire Association of Counties state this bill will increase state general fund, county, and local expenditures by an indeterminable amount in FY 2012 and each year thereafter. There will be no fiscal impact on state, county or local revenue.

#### **METHODOLOGY:**

The Judicial Branch states the proposed bill would establish class A felonies for altering or forging a request for medication with the intent of causing the patient's death or for coercing or exerting undue influence on a patient to request medication for the purpose of ending the patient's life. The Branch has no information on which to estimate how many new felonies will be brought pursuant to the proposed law. The Branch does, however, have information on the average cost of processing such cases in the trial courts. The cost to the Branch of an average

routine criminal case is estimated to be \$394.13 in FY 2012 and \$399.33 in FY 2013. These numbers do not consider the cost of any appeals that may be taken following trial. The Branch indicated the averages include cases that require little judicial attention and those that result in jury trials. The Branch assumes a felony prosecution resulting from this bill would likely involve a lengthy jury trial with much attendant publicity, which may result in the need for additional security. The Branch further assumes the appeal of a jury verdict, which would be likely, would result in several thousand dollars of additional costs for judge, law clerk and staff time at the Supreme Court.

The Judicial Council states this bill contains two sections which include the possibility of class A penalties which may result in an indeterminable increase in general fund expenditures. The Council states if an individual is found to be indigent, the court will appoint an attorney to represent the defendant. If either a public defender or contract attorney is assigned, the fixed fee of \$756.25 per felony is charged. If an assigned counsel attorney is used the fee is \$60 per hour with a fee cap of \$4,100. Additional expenses could be incurred if services other than counsel are requested and approved by the court. In addition, cases where the defendant has been found guilty carry the right of an automatic appeal, if requested by the defendant, to the superior or Supreme Court. The exact fiscal impact cannot be determined at this time.

The Department of Health and Services indicated the bill requires the Department to adopt a set of rules for 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 how many individuals would choose to follow the end-of life protocols established in this bill and, therefore, can not estimate the number of records to be reviewed or included in the annual report. The Department assumed a Program Specialist II would research, draft, submit and implement the rules and that approximately 100 hours would be required to complete these tasks. In addition, the Department estimated the annual review of records and preparation of the report would be performed by a Program specialist II in approximately 100 hours. Based on these assumptions, the Department estimated the following general fund costs:

Activity	FY 2012	FY 2013	FY 2014	FY 2015
Program Specialist II – Rulemaking, 100 hours	\$3,748	0	0	0
Program Specialist II – Annual Report 100 hours	\$3,748	\$3,940	\$4,142	\$4,361
Total	\$7,496	\$3,940	\$4,142	\$4,361

The Department of Corrections is not able to estimate the number of individuals who may be convicted of a class A felony under this bill. The Department indicates the average annual cost of incarcerating an individual in the general prison population was \$32,492 in FY 2010, and the average annual cost to the Division of Field Services for supervision of an offender was \$659 in FY 2010.

The New Hampshire Association of Counties states this bill would establish new criminal penalties. County expenditures will increase if more individuals are detained pending trial, prosecuted, convicted, and sentenced to incarceration in a county correctional facility. The Association is not able to determine the number of individuals who may be detained or sentenced, but states the average annual cost of incarceration in a county correctional facility is approximately \$35,000.

The Department of Justice states this bill will have no fiscal impact on the Department's revenue or expenditures since the criminal penalties under the bill would typically be prosecuted by a county or local prosecutor. The Department assumes any potential costs related to appeals to the Supreme Court or to complaints before a professional licensing board could be absorbed using existing resources.