

# HEALTH LAW ALERT

APRIL 2019

## MEDICAL AID IN DYING FOR THE TERMINALLY ILL ACT AWAITING SIGNATURE BY GOVERNOR MURPHY

On March 25, 2019, the [Medical Aid in Dying for the Terminally Ill Act](#) (Act) passed in both the New Jersey Assembly and New Jersey Senate and is now awaiting the signature of Governor Phil Murphy. The legislation permits a qualified terminally ill adult patient to obtain medication to self-administer in order to end the person's life. The bill contains numerous safeguards to ensure the process remains entirely voluntary and to protect the public welfare and vulnerable adults from abuse. Governor Murphy has until May 13, 2019 to sign the bill into law.

The Act is intended to recognize New Jersey's long-standing commitment to individual dignity, informed consent, and the fundamental right of competent adults to make health care decisions for themselves. These decisions include whether to have life-prolonging medical or surgical means or procedures provided, withheld, or withdrawn.

### The Definition of Qualified Terminally Ill

The Act will permit a qualified terminally ill person who is an adult resident of New Jersey and has been determined by his/her attending and consulting physicians to be terminally ill to obtain life-terminating medication for self-administration. "Terminally ill" is defined to mean that the person is in the terminal stage of an irreversible fatal illness, disease, or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six months or less. The diagnosis of terminal illness must be made by the patient's attending physician and confirmed by a consulting physician. In order to be deemed to "qualify," among other things, the individual must be a "capable" adult, meaning the person must have the capacity to make health care decisions and to communicate them to a health care provider, including communication through persons familiar with the patient's manner of communicating if those persons are available.

### Informed and Carefully Considered Decision

The patient must make an "informed" decision, meaning that the traditional elements of the informed consent process must be satisfied. This includes that the patient's decision must be made after the patient is informed of and comprehends:

- The patient's medical diagnosis
- The patient's prognosis

- The potential risks associated with taking the medication to be prescribed
- The probable result of taking the medication to be prescribed
- The feasible alternatives to taking the medication, including additional treatment opportunities, palliative care, comfort care, hospital care, and pain control.

Once the patient has made a request for medication to terminate his/her life and before such medication is prescribed, the physician must ensure all required steps under the Act are taken, including:

- Ensuring the informed consent process has occurred
- Referring the patient to a consulting physician for medical confirmation of the diagnosis, prognosis, and patient "capability" to make the decision and confirming that the decision is being made voluntarily
- Referring the patient for counseling, if appropriate
- Recommending that the patient notify his/her next of kin of the decision
- Advising the patient of the importance of having another person present if and when the patient chooses to take the life-terminating medication, and not to take the medication in a public place
- Informing the patient of the opportunity to rescind his/her request

- Verifying that the patient is making an informed decision
- Fulfilling medical record documentation requirements and certain reporting requirements.

### Additional Safeguards

The Act contains other safeguards against abuse, including that the individual must make two oral requests for life-terminating medication, with a 15-day separation between requests, followed by a written request on a form as required under the Act. The form must be signed by the individual and witnessed by at least two individuals, at least one of whom is not the patient's relative by blood, marriage, or adoption; who is entitled to any portion of the individual's estate; or in any way involved with the health care facility where the patient is receiving care or is a resident. Upon receipt of the written, signed, and witnessed request, the physician must

wait at least 48 hours before writing the prescription for life-terminating medication.

### Assistance

The Act contains a defined and safeguarded process to effectuate the right of a qualified terminally ill patient to obtain medication to end his/her life. The Act provides immunity to physicians and others who fully comply with the Act, and potential civil and criminal penalties for those who do not. Health care providers will need to institute detailed policies and procedures to ensure that every element of the Act is met.

*If you have any questions regarding the Act or would like assistance in preparing policies and procedures or otherwise implementing the requirements of the Act, feel free to contact **Lani M. Dornfeld, CHPC**, or another member of our health law practice group below.*



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**Health Care Practice Group | 101 Eisenhower Parkway, Roseland, NJ 07068 | 973.228.5700**

### Members

**Riza I. Dagli** | 973.403.3103 | rdagli@bracheichler.com  
**Lani M. Dornfeld, CHPC®** | 973.403.3136 | ldornfeld@bracheichler.com  
**John D. Fanburg, Chair** | 973.403.3107 | jfanburg@bracheichler.com

**Joseph M. Gorrell** | 973.403.3112 | jgorrell@bracheichler.com  
**Carol Grelecki** | 973.403.3140 | cgrelecki@bracheichler.com  
**Keith J. Roberts** | 973.364.5201 | kroberts@bracheichler.com

### Counsel

**Shannon Carroll** | 973.403.3126 | scarroll@bracheichler.com  
**Lauren D. Goldberg** | 973.364.5228 | lgoldberg@bracheichler.com  
**Debra W. Levine** | 973.403.3142 | dlevine@bracheichler.com  
**Randall H. Lee** | 973.364.5205 | rlee@bracheichler.com

**Richard B. Robins** | 973.403.3147 | rrobins@bracheichler.com  
**Jonathan J. Walzman** | 973.403.3120 | jwalzman@bracheichler.com  
**Edward J. Yun** | 973.364.5229 | eyun@bracheichler.com

### Associates

**Colleen Buontempo** | 973.364.5210 | cbuontempo@bracheichler.com  
**Lindsay P. Cambron** | 973.364.5232 | lcambron@bracheichler.com  
**Jocelyn Ezratty** | 973.364.5211 | jezratty@bracheichler.com  
**Susan E. Frankel** | 973.364.5209 | sfrankel@bracheichler.com

**Ed Hilzenrath** | 973.403.3114 | ehilzenrath@bracheichler.com  
**Cynthia J. Liba** | 973.403.3106 | cliba@bracheichler.com  
**Erika Marshall** | 973.364.5236 | emarshall@bracheichler.com

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