

NEW YORK'S MEDICAL AID IN DYING ACT: AN OVERVIEW (UPDATED 2/9/2026)

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DISCLAIMER

This presentation is for educational purposes only and is not a substitute for legal advice on any particular matter.

Any individual seeking advice regarding New York's Medical Aid in Dying Act is urged to seek consultation with legal counsel.

OUTLINE

- **Legislative History**
- **Conditions of Eligibility**
- **Process for Requesting Medication**
- **Rights and Protections for Providers and Facilities**
- **Relationship with Other Laws**

LEGISLATIVE HISTORY AND PENDING ACTIONS

- In 1985, Governor Mario Cuomo formed the Task Force on Life and the Law to address issues such as brain death, end-of-life decisions for severely disabled newborns, and do-not-resuscitate orders.
- In 1994, the Task Force issued a report titled “When Death is Sought”, which discussed “Assisted Suicide” in the medical context. The Task Force recommended against changing NY law, which thwarted proponents for many years.
- The Task Force has not met since 2019, and today its future is uncertain. Although NYSDOH no longer publishes its reports, the reports remain available through other sources.

LEGISLATIVE HISTORY AND PENDING ACTIONS

- **In 2016, the New York Legislature introduced the first version of Medical Aid In Dying Act.**
- **Revised and reintroduced over the years, with growing support.**
- **Legislature passed for the first time on June 9, 2025.**
- **Bill delivered to Governor Hochul on December 31, 2025.**
- **Governor signed on February 6, 2026, after negotiating additional amendments with the Legislature.**
- **Statute takes effect 6 months after signature, to permit NYSDOH time to issue regulations: August 5, 2026.**

CONDITIONS OF ELIGIBILITY

- **Adult**
- **New York resident**
- **Attending physician confirms illness or expected condition that is incurable and irreversible and that will, within reasonable medical judgment, produce death within 6 months**
 - **Note that no one can qualify solely based on age and/or disability**
- **Able to understand and appreciate the nature and consequences of health care decisions, including risk, benefits and alternatives, and to reach an informed decision**
- **Able to self-administer medication**

REQUEST PROCESS

- **Patient must make both a signed written and recorded oral request to attending physician.**
 - Patients who cannot make an oral request may use an alternative method.
- **Two adults must witness written request. Multiple exclusions as to who can be a witness, including (but not limited to):**
 - Relatives
 - Persons who would benefit from the patient's estate
 - Owner, operator, employee, or contractor of patient's treating health care facility
 - Health care agent under proxy and POA
 - Attending physician, consulting physician, evaluating mental health professional (if applicable)

ATTENDING PHYSICIAN'S ROLE

Attending Physician Must:

- **Determine that the patient has:**
 - **Terminal illness or condition**
 - **Decision-making capacity**
 - **Made an informed decision**
 - **Made the decision voluntarily and without coercion**
- **Inform patient of need for confirmation by consulting physician and make referral if requested**
- **Inform patient of the need for mandatory mental health evaluation and make referral if requested**

Attending physician must examine the patient in person, unless “extraordinary hardship” warrants a telehealth evaluation.

ATTENDING PHYSICIAN'S ROLE

Attending Physician Must:

- **Offer to refer patient for other treatment options, e.g., hospice and palliative care**
- **Provide culturally appropriate educational materials regarding hospice and palliative care**
- **Inform the patient:**
 - **Only the patient can administer medication**
 - **Medication cannot be taken in a “public place”**
 - **Patient should inform family of their decision**
 - **Patient may rescind at any time**
- **Adhere to certain documentation requirements**

CONSULTING PHYSICIAN'S ROLE

- **Examine the patient and their relevant medical records.**
- **Confirm to the attending physician and patient that:**
 - **Patient has terminal illness or condition**
 - **Patient is making and informed decision**
 - **Patient has decision-making capacity**
 - **Patient is acting voluntarily and without coercion**

MENTAL HEALTH PROFESSIONAL'S ROLE

- **The mental health professional evaluates the patient and reports in writing to the attending physician and consulting physician (if or when identified) whether the patient has decision-making capacity, such that the patient can make an informed decision.**
- **Any determination that the patient lacks decision-making capacity for the purposes of the Act cannot be construed as a lack of decision-making capacity for any other purpose.**

5-DAY WAITING PERIOD

- **The consulting physician's report and the mental health professional's report must be received by the attending physician before the attending physician may write the prescription for life-ending medication.**
- **There must be a 5-day waiting period between the attending physician's writing of the prescription and its fulfillment, unless the patient is expected to die without the medication within the 5-day period.**

LIMITED IMMUNITY FROM LIABILITY

- **Physicians, pharmacists, and others person shall not be liable for civil or criminal penalties or professional discipline “for taking any reasonable good-faith action or refusing to act” under the Act.**
- **Health care providers and other persons shall not be subject to employment, credentialing, or contractual liability or penalty for “any reasonable good-faith action or refusing to act” under the Act.**
- **Such protections do not extend to “negligence, recklessness or intentional misconduct.”**
- **Violation of the Act is a type of professional misconduct for licensed professionals.**

PROVIDER REFUSAL IS PERMISSIBLE

- **No health care provider or other person is obligated to participate in any part of the provision of life-ending medication to a patient.**
- **However, if a provider is unwilling or unable to participate in the provision of life-ending medication, the provider must assist with the transfer of the patient to a new provider.**

FACILITY POLICIES BASED ON RELIGIOUS OR MORAL CONVICTION

- **A health care facility may prohibit prescribing, dispensing, ordering or self-administration of life-ending medication if:**
 - **Doing so is contrary to a formally adopted policy that is expressly based on sincere religious beliefs or moral convictions.**
 - **The facility informed the patient of the policy prior to admission or as soon as reasonably possible.**
- **The facility must promptly transfer a patient who desires life-ending medication to a reasonably accessible facility that permits its prescribing, dispensing, ordering and self-administration.**
- **Hospice agencies (not just facilities) may also decline to participate.**

RELATIONSHIP WITH OTHER LAWS

- **A person who requests or self-administers medication pursuant to the Act shall not be deemed suicidal for any purpose under law or contract. This specifically includes life insurance.**
- **Compliant actions by health care providers and others shall not be construed as homicide or assisting in suicide.**
- **An insurer cannot condition the sale of a policy or the rate for life insurance, annuities, and health insurance on whether a patient makes or rescinds a request for medication.**
- **Professional malpractice insurance carriers cannot condition the sale of a policy or the rate on whether the insured does or does not participate in any action under the Act.**

MISC.

- **The death certificate shall list the underlying terminal illness or condition as the cause of death.**
- **Unused medications must be disposed of at a facility authorized to dispose of controlled substances; to a DEA take-back program; or consistent with other (TBD) regulations.**
- **NYSDOH is directed to publish regulations that will impose reporting obligations on physicians who take action under the Act, which may include patient identifying information. However, such information is generally exempt from public disclosure laws, subject to limited exceptions.**

QUICK COMPARISON TO OTHER U.S. JURISDICTIONS

- **12 other States and Washington, D.C. have already enacted Medicaid Aid in Dying Acts or (in Montana) have similar court authorization.**
- **Some states allow but do not require a mental health evaluation.**
- **Some states do not impose a state residency requirement.**
- **Most states do not require recording of the patient's oral request for medical aid in dying.**
- **Waiting periods vary by state—can be more or less the 5 days.**

QUESTIONS?

If you have questions after this presentation, please contact me:

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