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New Jersey Becomes Eighth State to Pass Death with Dignity Legislation

by James A. Robertson & Parampreet Singh

On March 25, 2019, both the New Jersey Assembly and the New Jersey Senate passed the Medical Aid in Dying for the Terminally Ill Act (the “Act”). The final version of the bill was sponsored by Assemblyman John J. Burzichelli and Assemblyman Tim Eustace. Governor Phil Murphy signed the bill into law on April 12, 2019 stating, “Today’s bill signing will make New Jersey the eighth state to allow terminally ill patients the dignity to make their own end-of-life decisions – including medical aid in dying. We must give these patients the humanity, respect, and compassion they deserve.” The bill will go into effect on August 1, 2019.

The Act “permits qualified terminally ill patient[s] to self-administer medication to end [their] live[s] in [a] humane and dignified manner.” Under the Act, “terminally ill” is defined as a patient who “is in the terminal stage of an irreversibly fatal illness, disease, or condition with a prognosis, based upon reasonable medical certainty,” with a life expectancy of six months or less.

Furthermore, qualified patients choosing to exercise their rights under this Act will be required to submit their request in writing, stating, among other things, that they have been fully informed of any available alternatives. Two individuals, one who must not be a relative, entitled to any portion of the patient’s estate, or the patient’s doctor, must witness and attest to the voluntariness of the patient’s request.

Proponents of the Act believe that it gives adults the right to control their lives, die with dignity if they so choose, and decrease their prolonged pain and suffering. Supporters also believe that there are sufficient safeguards in place to protect vulnerable, elderly adults. For example, the Act requires a patient to make several requests prior to receiving a prescription. Additionally, not all terminally ill patients who request and receive the medication will actually end up self-administering the medication – some patients simply like having the option of requesting such medication.

Opponents of the Act argue that once the “right-to-die”

Act is passed, New Jersey will be unable to outlaw the practice. Further, they argue that vulnerable adults may misuse the Act; certain adults may feel pressured to end their lives, viewing themselves as burdens to their families. Furthermore, the Medical Society of New Jersey opposes such a bill, believing such legislation “puts physicians at odds with their professional ethical requirements.” However, a 2015 Rutgers-Eagleton poll found that 63% of New Jersey residents support the passing of a “right-to-die” bill.

With the passage of the Act in New Jersey, and the growing trend across the country to pass similar legislation, it will be interesting to monitor how, if it all, the insurance industry responds. Currently, most life insurance companies issue a benefit to beneficiaries when the insured has taken his or her own life, so long as the insured does not take his or her own life within the first two years of the policy’s effective date, known as the contestability or exclusionary period. For now, many insurance policies do not distinguish between an individual committing suicide and an individual exercising their right to die. This may or may not change in the future.

Additionally, the Act allows patients to self-administer the medication. Although the legislation requires the attending physician to “[a]dvise the patient about the importance of having another person present if and when the patient chooses to self-administer the medication,” it may be problematic if the patient chooses to administer the medication independently, and/or in a public place. Issues of liability would most definitely arise from a patient’s decision to self-administer such medication in a public place. For example, individuals, including children, may experience trauma if they witness a



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patient self-administer the medication, or discover a patient who has already self-administered the medication. The Act also does not provide specific guidance with respect to disposing unused medication other than simply stating, “[A]ny medication dispensed . . . that a qualified terminally ill patient chooses not to self-administer shall be disposed of by lawful means.” This could lead to issues of liability with respect to the misuse or theft and redistribution of the medication, among other things.

Finally, as the number of states with such legislation and the amount of patients exercising their rights to die increase it will be interesting to monitor the effects of these statutes on physicians psychologically and professionally. It is debatable whether providing such medications to terminally ill patients in pain can be reconciled with a physician’s Hippocratic Oath

to do no harm. It will also be interesting to see what, if any, pressure will be placed upon doctors to provide such services to patients given that many may have moral objections to administering such medications.

Although passage of the Act has provided many answers, it has also given rise to just as many questions.

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