



ACLU of New York

Legislative Affairs
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2021-2022 Legislative Memorandum

**Subject: The New York Medical Aid in Dying Act
A.4321-A (Paulin) / S.6471 (Savino)**

Position: SUPPORT

Many New Yorkers living with terminal illnesses endure extensive and often painful treatments in the final months of their lives, including surgeries, radiation, and chemotherapy. When such medical interventions cannot reverse the course of illness, and near-term death becomes certain, some individuals wish to accelerate the dying process with the aid of prescription medication. Others may take comfort in the knowledge that they have a degree of control over how their life will end, even if they do not choose to avail themselves of medical aid in dying.

The New York Civil Liberties Union strongly supports the New York Medical Aid in Dying Act, which would give people who are terminally ill with a prognosis of no more than six months to live the option to request, through a tightly regulated process, medication they can administer themselves to bring about a peaceful death. Ten states and the District of Columbia that have enacted medical aid in dying through legislation, ballot measures, or judicial rulings.

Giving individuals control over how they end their life is both compassionate and in keeping with important civil liberties principles. Though New York's highest court has declined to recognize a right to access medical aid in dying under the state constitution, the Court of Appeals affirmed the prerogative of the legislature to establish a regulated system for doctors to assist patients in bringing about death on their own terms. It is time for the legislature to take that step.

**Exercising control over the end of one's life is an important civil liberty
that the legislature must act to protect**

The right to make choices about one's medical care is rooted in the fundamental civil liberties principles of autonomy, privacy, bodily integrity, and

self-determination. These vital liberty interests are firmly protected under the United States and New York constitutions.

It has long been established in New York that individuals have the right to receive or continue treatment, or to have life-sustaining measures withheld or withdrawn. More than a century ago, Justice Cardozo articulated the maxim that “[e]very human being of adult years and sound mind has a right to determine what shall be done with his own body.”¹ The Court of Appeals has affirmed the right of involuntarily committed patients to refuse antipsychotic medication,² and the U.S. Supreme Court has held that competent persons have a constitutionally protected liberty interest in refusing unwanted medical treatment.³ These same principles undergird the right of a competent adult to seek medical assistance in bringing about death.

In 2017, in a case decided on a motion to dismiss and without a fully developed record, the Court of Appeals declined to hold that those suffering from terminal illness have a fundamental right to medical aid in dying.⁴ Justice Rivera, writing in concurrence, would have held that the state cannot unduly burden access to medication that would bring about death for a subgroup of patients who are in their very final stages of life.⁵ In denying the plaintiffs’ constitutional claims in *Myers*, the court acknowledged that the state legislature could act to establish a regulated system under which medical aid in dying would be permitted.⁶

The NYCLU, which appeared as *amicus curiae* in *Myers*, firmly believes that there is a fundamental liberty interest in a person’s access to medical aid in dying that deserves protection under the state and federal constitutions. In the absence of a judicial ruling recognizing such a right, the legislature should pass, and the governor should sign, the Medical Aid in Dying Act to give New Yorkers the right to make deeply personal choices about how to spend their final moments of life.

Allowing people in the final stages of life to receive medical assistance in dying is compassionate and sensible

Many people nearing the end of life have fought hard to cure their illnesses. The lives of such patients are being taken by the inexorable progression of their

¹ *Schloendorff v. Soc’y of New York Hosp.*, 211 N.Y. 125, 129 (N.Y. 1914).

² *Rivers v. Katz*, 67 N.Y.2d 485, 495 (N.Y. 1986).

³ *Cruzan by Cruzan v. Dir., Missouri Dep’t of Health*, 497 U.S. 261, 278 (1990).

⁴ *Myers v. Schneiderman*, 30 N.Y.3d 1, 15 (N.Y. 2017).

⁵ *Id.* at 18 (River, J., concurring).

⁶ *Id.* at 16-17.

terminal diseases, and medicine cannot change that fact. Some may want to ensure that their final moments are spent in the comfort of those they love, and thus want to control the timing of their death. Others simply want to know they have the option to end suffering as death nears.

The Medical Aid in Dying Act is about giving people a *choice* about how much discomfort to tolerate at the end of life and how they want their last hours to be spent. Those who obtain life-ending medication can choose the time and setting of their final moments – if they decide to bring about their deaths. Indeed, many individuals in states that permit medical aid in dying ultimately choose not to take the medication they are prescribed. Since Oregon’s aid in dying law passed in 1997, roughly one-third of those prescribed life-ending medication never ingested it.⁷

The model followed by this legislation has been shown in other states to lead to a broader awareness and embrace of end-of-life treatment. Health care professionals in California, which passed a similar law in 2016, have reported that the option of medical aid in dying has helped spur conversations between patients and physicians about hospice and other palliative care options, which have in fact led to improved quality of life for terminally ill patients.⁸ More than 85% of those who died after ingesting aid-in-dying medication in California in 2019 were enrolled in palliative or hospice care at the time of their passing.⁹

The choice to accelerate the dying process must be made free of coercion.

The topic of end-of-life care unavoidably conjures strong emotions, and there are those who harbor sincere doubts about the merits of legislation to expand access to medical aid in dying. Some may worry that people will make premature decisions in response to terminal diagnoses or will be pressured by others to request life-ending medication. Others may be concerned that that the bill’s request procedures and requirement that medication be self-administered exclude those with degenerative diseases who wish to accelerate dying but are not able at the end of their lives to request or ingest medication themselves.

⁷ Oregon Health Authority, *Oregon Death With Dignity Act: 2019 Data Summary*, p. 5, <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year22.pdf>.

⁸ Soumya Karlamangla, *There’s an unforeseen benefit to California’s physician-assisted death law*, L.A. Times, Aug. 21, 2017, <https://www.latimes.com/health/la-me-end-of-life-care-20170821-htmlstory.html>.

⁹ Cal. Dep’t of Pub. Health, *California End of Life Option Act 2019 Data Report*, p.9, https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/CDPHEndofLifeOptionActReport2019%20_Final%20ADA.pdf.

Such concerns are sincerely held and deserve consideration. The decision to accelerate death is deeply personal, and must be made voluntarily. Any legislative enactment or regulatory system that permits medical aid in dying must be designed in a way that guards against the possibility that the decision to request life-ending medication will be coerced or improperly influenced.

The New York Medical Aid in Dying Act reflects a carefully crafted, measured approach based on the practices of other states that permit aid in dying. Its structure is intended to ensure a person's decision to accelerate death is fully informed and guarded against abuse. This is why the bill requires, as a core safeguard, a terminal diagnosis determined by an attending physician and medically confirmed by a consulting physician. The bill also requires that the attending physician discuss with the patient the possibility of not ingesting the medication and of other end-of-life alternatives, including palliative and hospice care. A prescription for life-ending medication can also not be written without the attending physician offering the patient the opportunity to rescind the request.

The Medical Aid in Dying Act addresses the risk of coercion through multiple safeguards to ensure that a person's request for aid in dying is voluntary. Only a qualified individual herself may request life-ending medication, both orally and with a signed written form. A written request for medication must be witnessed by two adults, neither of whom can be the attending or consulting physician and one of whom must not be a relative, be entitled to a portion of the qualified individual's estate, or be an employee of a health care facility where the qualified individual is being treated. If either physician believes the individual may lack capacity, she must refer the patient for a mental health evaluation. And the bill plainly provides that no person shall qualify for aid in dying solely because of age or disability.

Conclusion

Decisions about end-of-life care invoke important civil liberties interests of autonomy, bodily integrity, and self-determination. How a person chooses to face death is a decision only that individual can make. The legislature should protect the rights of individuals to decide for themselves how they spend their last days by passing the Medical Aid in Dying Act.