HOUSE . . . . No. 4782

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 15, 2020.

The committee on Public Health to whom was referred the petition (accompanied by bill, House, No. 1926) of Louis L. Kafka and others relative to end of life options, reports recommending that the accompanying bill (House, No. 4782) ought to pass.

For the committee,

JOHN J. MAHONEY.

FILED ON: 5/29/2020

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The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to end of life options.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws, as appearing in the 2018 Official Edition, is hereby amended by
2 inserting after Chapter 201F the following chapter:-

3 CHAPTER 201G

4 MASSACHUSETTS END OF LIFE OPTIONS ACT

5 Section 1. For the purposes of this chapter, the following terms shall have the following
6 meanings unless the context clearly requires otherwise:

7 "Adult", an individual who is 18 years of age or older.

8 "Aid in Dying", the medical practice of a physician prescribing lawful medication to a
9 qualified patient, which the patient may choose to self-administer to bring about a peaceful
10 death.

11 "Attending physician", the physician who has primary responsibility for the care of a
12 terminally ill patient.

13 “Capable”, having the capacity to make informed, complex health care decisions;
14 understand the consequences of those decisions; and to communicate them to health care
15 providers, including communication through individuals familiar with the patient’s manner of
16 communicating if those individuals are available.

17 “Consulting physician”, a physician who is qualified by specialty or experience to make a
18 professional diagnosis and prognosis regarding a terminally ill patient’s condition.

19 “Counseling”, one or more consultations as necessary between a licensed mental health
20 professional and a patient for the purpose of determining that the patient is capable and not
21 suffering from a psychiatric or psychological disorder or depression causing impaired judgment.
22 A licensed mental health professional, as defined by the department of public health for the
23 purposes of this chapter, that is part of an interdisciplinary team defined in 105 CMR 141.203,
24 for a patient receiving hospice care, may provide the necessary consultations, provided that a
25 consultation occurs after the patient has made the oral request.

26 “Guardian”, an individual who has qualified as a guardian of an incapacitated person
27 pursuant to court appointment and includes a limited guardian, special guardian and temporary
28 guardian, but excludes one who is merely a guardian ad litem as defined in section 5-101 of
29 article V of chapter 190B. Guardianship shall not include a health care proxy as defined by
30 chapter 201D.

31 “Health care provider”, an individual licensed, certified, or otherwise authorized or
32 permitted by law to administer health care or dispense medication in the ordinary course of
33 business or practice of a profession, including a health care facility.

34 “Incapacitated person”, an individual who for reasons other than advanced age or being a
35 minor, has a clinically diagnosed condition that results in an inability to receive and evaluate
36 information or make or communicate decisions to such an extent that the individual lacks the
37 ability to meet essential requirements for physical health, safety, or self-care, even with
38 appropriate technological assistance. An “incapacitated person” shall be defined consistent with
39 the definition of an individual described in section 5-101 of article V of chapter 190B.

40 “Informed decision”, a decision by a qualified patient to request and obtain a prescription
41 for medication pursuant to this chapter that is based on an understanding and acknowledgment of
42 the relevant facts and that is made after being fully informed by the attending physician of:

43 (a) the patient’s medical diagnosis;

44 (b) the patient’s prognosis;

45 (c) the potential risks associated with taking the medication to be prescribed;

46 (d) the probable result of taking the medication to be prescribed; and

47 (e) the feasible alternatives or additional treatment opportunities, including, but not
48 limited to, palliative care as defined in section 227 of chapter 111.

49 “Medically confirmed,” the medical opinion of the attending physician has been
50 confirmed by a consulting physician who has examined the patient and the patient’s relevant
51 medical records.

52 “Medication”, aid in dying medication.

53 "Palliative care", a health care treatment as defined in section 227 of chapter 111,
54 including interdisciplinary end-of-life care and consultation with patients and family members, to
55 prevent or relieve pain and suffering and to enhance the patient's quality of life, including
56 hospice.

57 "Patient", an individual who has received health care services from a health care provider
58 for treatment of a medical condition.

59 "Physician", a doctor of medicine or osteopathy licensed to practice medicine in
60 Massachusetts by the board of registration in medicine.

61 "Qualified patient", a capable adult who is a resident of Massachusetts, has been
62 diagnosed as being terminally ill, and has satisfied the requirements of this chapter.

63 "Resident", an individual who demonstrates residency in Massachusetts by presenting
64 one form of identification which may include but is not limited to:

65 (a) possession of a Massachusetts driver's license;

66 (b) proof of registration to vote in Massachusetts;

67 (c) proof that the individual owns or leases real property in Massachusetts;

68 (d) proof that the individual has resided in a Massachusetts health care facility for at least
69 3 months;

70 (e) Computer-generated bill from a bank or mortgage company, utility company, doctor,
71 or hospital;

72 (f) A W-2 form, property or excise tax bill, or Social Security Administration or other

73 pension or retirement annual benefits summary statement dated within the current or prior year;

74 (g) A MassHealth or Medicare benefit statement; or

75 (h) Filing of a Massachusetts tax return for the most recent tax year.

76 "Self-administer", a qualified patient's act of ingesting medication obtained

77 pursuant to this chapter.

78 "Terminally ill", having a terminal illness or condition which can reasonably be

79 expected to cause death within 6 months, whether or not treatment is provided.

80 Section 2.

81 (a) A patient wishing to receive a prescription for medication pursuant to this

82 chapter shall make an oral request to the patient's attending physician. No less than 15 days after

83 making the request the patient shall submit a written request to the patient's attending

84 physician

85 in substantially the form set in section 4.

86 (b) A terminally ill patient may voluntarily make an oral request for aid in dying

87 and a prescription for medication that the patient can choose to self-administer to bring about a

88 peaceful death if the patient:

89 (1) is a capable adult;

90 (2) is a resident of Massachusetts; and

91 (3) has been determined by the patient's attending physician to be terminally ill.

92 (c) A patient may provide a written request for aid in dying and a

93 prescription for medication that the patient can choose to self-administer to bring

94 about a peaceful death if the patient:

95 (1) has met the requirements in subsection (b);

96 (2) has been determined by a consulting physician to be terminally ill;

97 (3) has been approved by a licensed mental health professional; and

98 (4) has had no less than 15 days pass after making the oral request.

99 (d) A patient shall not qualify under this chapter if the patient has a guardian.

100 (e) A patient shall not qualify under this chapter solely because of age or disability.

101 Section 3.

102 (a) A valid written request must be witnessed by at least two individuals who, in

103 the presence of the patient, attest that to the best of their knowledge and belief that patient is:

104 (1) personally known to the witnesses or has provided proof of identity;

105 (2) acting voluntarily; and

106 (3) not being coerced to sign the request.

107 (b) At least one of the witnesses shall be an individual who is not:

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

109 (2) an individual who at the time the request is signed would be entitled to any
110 portion of the estate of the qualified patient upon death under any will or by operation of law;

111 (3) financially responsible for the medical care of the patient; or

112 (4) an owner, operator, or employee of a health care facility where the qualified
113 patient is receiving medical treatment or is a resident.

114 (d) The patient's attending physician at the time the request is signed shall not
115 serve as a witness.

116 (e) If the patient is a patient in a long-term care facility at the time the written
117 request is made, one of the witnesses shall be an individual designated by the facility.

118 Section 4.

119 REQUEST FOR AID IN DYING MEDICATION PURSUANT TO THE

120 MASSACHUSETTS END OF LIFE OPTIONS ACT

121 I,. . . . . , am an adult of sound mind and a resident of the State of

122 Massachusetts. I am suffering from . . . . , which my attending
123 physician has determined is a terminal illness or condition which can reasonably be expected to
124 cause death within 6 months. This diagnosis has been medically confirmed as required by law.

125 I have been fully informed of my diagnosis, prognosis, the nature of the aid in
126 dying medication to be prescribed and potential associated risks, the expected result, and the

127 feasible alternatives and additional treatment opportunities, including comfort care, hospice care,
128 and pain control.

129 I request that my attending physician prescribe aid in dying medication that will
130 end my life in a peaceful manner if I choose to take it, and I authorize my attending physician to
131 contact any pharmacist to fill the prescription.

132 I understand that I have the right to rescind this request at any time. I understand
133 the full import of this request and I expect to die if I take the aid in dying medication to be
134 prescribed. I further understand that although most deaths occur within three hours, my death
135 may take longer and my physician has counseled me about this possibility. I make this request
136 voluntarily, without reservation, and without being coerced, and I accept full responsibility for
137 my actions.

138 Signed:. . . . . Dated:. . . . .

139 DECLARATION OF WITNESSES

140 By signing below, on the date the patient named above signs, we declare that the
141 patient making and signing the above request is personally known to us or has provided proof of

142 identity, and appears to not be under duress, fraud, or undue influence.

143 Printed Name of Witness 1: . . . .

144 Signature of Witness l/Date:. . . . .

145 Printed Name of Witness 2:. . . . .

146 Signature of Witness 2/Date:. . . . .

147 Section 5.

148 (a) A qualified patient may at any time rescind the request for medication

149 pursuant to this chapter without regard to the qualified patient's mental state.

150 (b) A prescription for medication under this chapter may not be written without

151 the attending physician offering the qualified patient an opportunity to rescind the request for

152 medication.

153 Section 6.

154 (a) The attending physician shall:

155 (1) make the initial determination of whether an adult patient:

156 (i) is a resident of this state;

157 (ii) is terminally ill;

158 (iii) is capable; and

159 (iv) has voluntarily made the request for aid in dying.

160 (2) ensure that the patient is making an informed decision by discussing with the

161 patient:

162 (i) the patient’s medical diagnosis;

163 (ii) the patient’s prognosis;

164 (iii) the potential risks associated with taking the medication to be prescribed;

165 (iv) the probable result of taking the medication to be prescribed; and

166

167 (v) the feasible alternatives and additional treatment opportunities, including, but

168 not limited to, palliative care as defined in section 227 of chapter 111.

169 (3) refer the patient to a consulting physician to medically confirm the diagnosis

170 and prognosis and for a determination that the patient is capable and is acting voluntarily;

171 (4) refer the patient for counseling pursuant to section 8;

172 (5) ensure that sections 6 through 8, inclusive, of this chapter are followed in

173 chronological order;

174 (6) have a prior clinical relationship with the patient, unless the patient's primary

175 care physician is unwilling to participate;

176 (7) recommend that the patient notify the patient's next of kin;

177 (8) recommend that the patient complete a Medical Order for Life-Sustaining

178 Treatment form;

179 (9) counsel the patient about the importance of:

180 (i) having another individual present when the patient takes the medication

181 prescribed pursuant to this chapter; and

182 (ii) not taking the medication in a public place;

183 (10) inform the patient that the patient may rescind the request for medication at
184 any time and in any manner;

185 (11) verify, immediately prior to writing the prescription for medication, that the
186 patient is making an informed decision;

187 (12) educate the patient on how to self-administer the medication;

188 (13) fulfill the medical record documentation requirements of section 13;

189 (14) ensure that all appropriate steps are carried out in accordance with this
190 chapter before writing a prescription for medication for a qualified patient; and

191 (15) (i) dispense medications directly, including ancillary medications intended to
192 facilitate the desired effect to minimize the patient's discomfort, if the attending physician is
193 authorized

194 under law to dispense and has a current drug enforcement administration
195 certificate; or

196 (ii) with the qualified patient's written consent;

197 (A) contact a pharmacist, inform the pharmacist of the prescription, and

198 (B) deliver the written prescription personally, by mail, or by otherwise
199 permissible electronic communication to the pharmacist, who will dispense the medications
200 directly to either the patient, the attending physician, or an expressly identified agent of the
201 patient. Medications dispensed pursuant to this paragraph shall not be dispensed by mail or other
202 form of courier.

203 (b) The attending physician may sign the patient's death certificate which shall list
204 the underlying terminal disease as the cause of death.

205 Section 7.

206 (a) Before a patient may be considered a qualified patient under this chapter the

207 consulting physician shall:

208 (1) examine the patient and the patient's relevant medical records;

209 (2) confirm in writing the attending physician's diagnosis that the patient is
210 suffering from a terminal illness; and

211 (3) verify that the patient:

212 (i) is capable;

213 (ii) is acting voluntarily; and

214 (iii) has made an informed decision.

215 Section 8.

216 (a) An attending physician shall refer a patient who has requested medication
217 under this chapter to counseling to determine that the patient is not suffering from a psychiatric
218 or psychological disorder or depression causing impaired judgment. The licensed mental health

219 professional shall review the medical history of the patient relevant to the patient’s
220 current mental health and then shall submit a final written report to the prescribing physician.

221 (b) The medication may not be prescribed until the individual performing the
222 counseling determines that:

223 (1) the patient is not suffering from a psychiatric or psychological disorder or
224 depression causing impaired judgment; and

225 (2) the licensed mental health professional has no reason to suspect coercion in
226 the patient's decision-making process.

227 Section 9.

228 A qualified patient may not receive a prescription for medication pursuant to this
229 chapter unless the patient has made an informed decision. Immediately before writing a
230 prescription for medication under this chapter the attending physician shall verify that the
231 qualified patient is making an informed decision.

232 Section 10.

233 The attending physician shall recommend that a patient notify the patient's next of
234 kin of the patient's request for medication pursuant to this chapter. A request for medication shall
235 not be denied because a patient declines or is unable to notify the next of kin.

236 Section 11.

237 The following items shall be documented or filed in the patient's medical record:

238 (1) the determination and the basis for determining that a patient requesting
239 medication pursuant to this chapter is a qualified patient;

240 (2) all oral requests by a patient for medication;

241 (3) all written requests by a patient for medication made pursuant to sections 3
242 through 5;

243 (4) the attending physician's diagnosis, prognosis, and determination that the
244 patient is capable, is acting voluntarily, and has made an informed decision;

245 (5) the consulting physician's diagnosis, prognosis, and verification that the
246 patient is capable, is acting voluntarily, and has made an informed decision;

247 (6) a report of the outcome and determinations made during counseling;

248 (7) the attending physician's offer before prescribing the medication to allow the
249 qualified patient to rescind the patient's request for the medication; and

250 (8) other care options that were offered to the patient, including, but not limited
251 to, hospice and palliative care; and

252 (9) a note by the attending physician indicating:

253 (a) that all requirements under this chapter have been met; and

254 (b) the steps taken to carry out the request, including a notation of the medication

255 prescribed.

256 Section 12.

257 Any medication dispensed under this chapter that was not self-administered shall
258 be disposed of by lawful means. The medication dispenser shall be responsible for informing the

259 individual collecting the medication what disposal by lawful means entails.

260 Section 13.

261 Physicians shall keep a record of the number of requests; number of

262 prescriptions written; number of requests rescinded; the number of qualified
263 patients that took the medication under this chapter; the general demographic and socioeconomic

264 characteristics of the patient, and any physical disability of the patient. This data shall be

265 reported to the department of public health annually, and shall subsequently be made
266 available to the public.

267 Section 14.

268 (a) Any provision in a contract, will, or other agreement, whether written or oral,
269 to the extent the provision would affect whether a patient may make or rescind a request for
270 medication pursuant to this chapter, is not valid.

271 (b) A qualified patient's act of making or rescinding a request for aid in dying
272 shall not provide the sole basis for the appointment of a guardian or conservator.

273 (c) A qualified patient’s act of self-administering medication obtained pursuant to
274 this act shall not constitute suicide or have an effect upon any life, health, or accident insurance
275 or annuity policy.

276 (d) Actions taken by health care providers and patient advocates supporting a
277 qualified patient exercising his or her rights pursuant to this chapter, including being present
278 when the patient self-administers medication, shall not for any purpose, constitute elder abuse,
279 neglect, assisted suicide, mercy killing, or homicide under any civil or criminal law.

280 (e) State regulations, documents and reports shall not refer to the practice of aid in

281 dying under this chapter as" suicide" or "assisted suicide."

282 Section 15.

283 (a) A health care provider may choose whether to voluntarily participate in

284 providing to a qualified patient medication pursuant to this chapter and shall not be under any

285 duty, whether by contract, by statute, or by any other legal requirement, to participate in

286 providing a qualified patient with the medication.

287 (b) A health care provider or professional organization or association may not

288 subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of

289 membership, or other penalty for participating or refusing to participate in providing

290 medication

291 to a qualified patient pursuant to this chapter.

292 (c) If a health care provider is unable or unwilling to carry out a patient's request

293 under this chapter and the patient transfers care to a new health care provider, the prior health

294 care provider shall transfer, upon request, a copy of the patient's relevant medical records to the

295 new health care provider.

296 (d) (1) Health care providers shall maintain and disclose upon request their

297 written policies outlining the extent to which they refuse to participate in providing to a

298 qualified

299 patient any medication pursuant to this chapter.

300 (2) The required consumer disclosure shall at minimum:

301 (i) include information about this chapter;

302 (ii) identify the specific services in which they refuse to participate;

303 (iii) clarify any difference between institution-wide objections and those that may
304 be raised by individual licensed providers who are employed or work on contract with the
305 provider;

306 (iv) describe the mechanism the provider will use to provide patients a referral to
307 another provider or provider in the provider's service area who is willing to perform the specific
308 health care service;

309 (v) describe the provider's policies and procedures relating to transferring patients
310 to other providers who will implement the health care decision; and

311 (vi) inform consumers that the cost of transferring records will be borne by the

312 transferring provider.

313 (c) The consumer disclosure shall be provided to an individual upon request.

314 Section 16.

315 (a) Purposely or knowingly altering or forging a request for medication pursuant
316 to this chapter without authorization of the patient or concealing or destroying a rescission of a
317 request for medication is punishable as a felony if the act is done with the intent or effect of
318 causing the patient's death.

319 (b) An individual who coerces or exerts undue influence on a patient to request

320 medication to end the patient's life, or to destroy a rescission of a request, shall be guilty

321 of a

322 felony punishable by imprisonment in the state prison for not more than 3 years or in the

323 house of correction for not more than 2 ½ or by a fine of not more than $1,000 or by both such

324 fine and imprisonment.

325 (c) Nothing in this chapter limits further liability for civil damages resulting from

326 other negligent conduct or intentional misconduct by any individual.

327 (4) The penalties in this chapter do not preclude criminal penalties applicable

328 under other law for conduct inconsistent with the provisions of this chapter.

329 Section 17.

330 A governmental entity that incurs costs resulting from a qualified patient self-

331 administering medication in a public place while acting pursuant to this chapter may

332 submit a

333 claim against the estate of the patient to recover costs and reasonable attorney fees related

334 to

335 enforcing the claim.

336 Section 18.

337 If an emergency medical provider finds a patient who has self-administered the
338 prescription, they shall follow standard resuscitation protocol. If a Medical Order for Life-
339 Sustaining Treatment or other legally recognized do-not-resuscitate order if found, then the
340 medical provider shall follow the directives of the form.

341 Section 19.

342 Nothing in this chapter may be construed to authorize a physician or any other
343 individual to end a patient's life by lethal injection, mercy killing, assisted suicide, or active
344 euthanasia.

345 Section 20.

346 If any provision of this chapter or its application to any individual or circumstance
347 is held invalid, the remainder of the act or the application of the provision to other individuals or
348 circumstances is not affected.