

SENATE No. 1225

The Commonwealth of Massachusetts

PRESENTED BY:

Barbara A. L'Italien

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to end of life options.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/26/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/27/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2017</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	<i>2/1/2017</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	<i>2/1/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>2/1/2017</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/2/2017</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>2/2/2017</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>2/2/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/3/2017</i>

SENATE No. 1225

By Ms. L'Italien, a petition (accompanied by bill, Senate, No. 1225) of Barbara A. L'Italien, William N. Brownsberger, Patricia D. Jehlen, Marjorie C. Decker and other members of the General Court for legislation relative to end of life options. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 Section 1: The General Laws, as appearing in the 2014 Official Edition, is hereby
2 amended by inserting after Chapter 201F the following new chapter:-

3 CHAPTER 201G

4 MASSACHUSETTS END OF LIFE OPTIONS ACT

5 Section 1. Definitions.

6 The definitions in this section apply throughout this chapter unless the context clearly
7 requires otherwise.

8 “Adult” means an individual who is 18 years of age or older.

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

12 “Attending physician” means the physician who has primary responsibility for the care of
13 a terminally ill patient.

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

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

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

26 “Guardian” means an individual who has qualified as a guardian of an incapacitated
27 person pursuant to court appointment and includes a limited guardian, special guardian and
28 temporary guardian, but excludes one who is merely a Guardian ad litem (as defined in Chapter
29 190B, Article V, Section 5-101). Guardianship does not include a Health Care Proxy (as defined
30 by Chapter 201D of the Massachusetts General Laws).

31 “Health care provider” means 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, and includes a health care facility.

34 “Incapacitated person” means an individual who for reasons other than advanced age or
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. This term shall follow as described by Chapter 190B,
39 Article V, Section 5-101)

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

- 44 (a) The patient’s medical diagnosis;
- 45 (b) The patient’s prognosis;
- 46 (c) The potential risks associated with taking the medication to be prescribed;
- 47 (d) The probable result of taking the medication to be prescribed; and
- 48 (e) The feasible alternatives or additional treatment opportunities, including but not
49 limited to palliative care as defined in Ch. 111 § 227.

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

53 “Medication” means aid in dying medication.

54 “Palliative care” means a health care treatment as defined in Ch. 111 § 227, including
55 interdisciplinary end-of-life care and consultation with patients and family members, to prevent
56 or relieve pain and suffering and to enhance the patient’s quality of life, including hospice.”

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

59 “Physician” means a doctor of medicine or osteopathy licensed to practice medicine in
60 Massachusetts by the board of registration in medicine.

61 “Qualified patient” means 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” means an individual who demonstrates residency in Massachusetts by
64 presenting 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
69 least 3 months;

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

72 (f) A W-2 form, property or excise tax bill, or Social Security Administration or
73 other pension or retirement annual benefits summary statement dated within the current or prior
74 year;

75 (g) A Medicaid or Medicare benefit statement; or

76 (h) Filing of a Massachusetts tax return for the most recent tax year;

77 “Self-administer” means a qualified patient’s act of ingesting medication obtained
78 pursuant to this chapter.

79 “Terminally ill” means having a terminal illness or condition which can reasonably be
80 expected to cause death within 6 months, whether or not treatment is provided.

81 Section 2. Terminally ill patient’s right to request aid in dying and obtain prescription for
82 medication pursuant to this chapter.

83 (1) A terminally ill patient may voluntarily make an oral request for aid in dying and
84 a prescription for medication that the patient can choose to self-administer to bring about a
85 peaceful death if the patient:

86 (a) is a capable adult;

87 (b) is a resident of Massachusetts; and

88 (c) has been determined by the patient’s attending physician to be terminally ill.

89 (2) A terminally ill patient may provide a written request for aid in dying and a
90 prescription for medication that the patient can choose to self-administer to bring about a
91 peaceful death if the patient:

92 (a) has met the requirements in part (1) of this section;

93 (b) has been determined by a consulting physician to be terminally ill;

94 (c) has been approved by a licensed mental health professional; and

95 (d) has had no less than fifteen days pass after making the oral request.

96 (3) A patient may not qualify under this chapter if the patient has a guardian.

97 (4) A patient may not qualify under this chapter solely because of age or disability.

98 Section 3. Oral and Written Requests.

99 (1) A patient wishing to receive a prescription for medication pursuant to this chapter
100 shall make an oral request to the patient's attending physician. No less than fifteen days after
101 making said request the patient will submit a written request to the patient's attending physician
102 in substantially the form set in Section 4.

103 (2) A valid written request must be witnessed by at least two individuals who, in the
104 presence of the patient, attest that to the best of their knowledge and belief that patient is:

105 (a) personally known to the witnesses or has provided proof of identity;

106 (b) acting voluntarily; and

107 (c) not being coerced to sign the request.

- 108 (3) At least one of the witnesses shall be an individual who is not:
- 109 (a) a relative of the patient by blood, marriage, or adoption;
- 110 (b) an individual who at the time the request is signed would be entitled to any portion of
- 111 the
- 112 estate of the qualified patient upon death under any will or by operation of law; and
- 113 (c) an owner, operator, or employee of a health care facility where the qualified patient is
- 114 receiving medical treatment or is a resident.
- 115 (4) The patient's attending physician at the time the request is signed shall not serve as a
- 116 witness.
- 117 (5) If the patient is a patient in a long-term care facility at the time the written request is
- 118 made, one of the witnesses shall be an individual designated by the facility.

119 Section 4. Form of Written Request and Witness Declaration.

120 REQUEST FOR AID IN DYING MEDICATION PURSUANT TO THE

121 MASSACHUSETTS END OF LIFE OPTIONS ACT

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

123 Massachusetts. I am suffering from , which my attending physician has

124 determined is a terminal illness or condition which can reasonably be expected to cause death

125 within 6 months. This diagnosis has been medically confirmed as required by law.

126 I have been fully informed of my diagnosis, prognosis, the nature of the aid in dying
127 medication to be prescribed and potential associated risks, the expected result, and the feasible
128 alternatives and additional treatment opportunities, including comfort care, hospice care, and
129 pain control.

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

133 I understand that I have the right to rescind this request at any time. I understand the full
134 import of this request and I expect to die if I take the aid in dying medication to be prescribed. I
135 further understand that although most deaths occur within three hours, my death may take longer
136 and my physician has counseled me about this possibility. I make this request voluntarily,
137 without reservation, and without being coerced, and I accept full responsibility for 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 patient
141 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 1/Date:

145 Printed Name of Witness 2:

146 Signature of Witness 2/Date:

147 Section 5. Right to rescind request -- requirement to offer opportunity to rescind.

148 (1) A qualified patient may at any time rescind the request for medication pursuant to this
149 chapter without regard to the qualified patient's mental state.

150 (2) A prescription for medication pursuant to this chapter may not be written without the
151 attending physician offering the qualified patient an opportunity to rescind the request for
152 medication.

153 Section 6. Attending physician responsibilities.

154 (1) The attending physician shall:

155 (a) 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 (b) ensure that the patient is making an informed decision by discussing with the patient:

161 (i) a patient's medical diagnosis;

162 (ii) a patient's prognosis;

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

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

165 (v) the feasible alternatives and additional treatment opportunities, including but not
166 limited to palliative care as defined in Ch. 111 § 227.

167 (c) refer the patient to a consulting physician to medically confirm the diagnosis and
168 prognosis and for a determination that the patient is capable and is acting voluntarily;

169 (d) refer the patient for counseling pursuant to section 8;

170 (e) recommend that the patient notify the patient's next of kin;

171 (f) counsel the patient about the importance of:

172 (i) having another individual present when the patient takes the medication prescribed
173 pursuant to this chapter; and

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

175 (h) inform the patient that the patient may rescind the request for medication at any time
176 and in any manner;

177 (i) verify, immediately prior to writing the prescription for medication, that the patient is
178 making an informed decision;

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

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

182 (1) (i) dispense medications directly, including ancillary medications intended to
183 facilitate the desired effect to minimize the patient's discomfort, if the attending physician is
184 authorized under law to dispense and has a current drug enforcement administration certificate;
185 or

186 (ii) with the qualified patient's written consent:

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

188 (B) deliver the written prescription personally, by mail, or by otherwise permissible
189 electronic communication to the pharmacist, who will dispense the medications directly to either
190 the patient, the attending physician, or an expressly identified agent of the patient. Medications
191 dispensed pursuant to this paragraph (1) shall not be dispensed by mail or other form of courier.

192 (2) The attending physician may sign the patient's death certificate which shall list the
193 underlying terminal disease as the cause of death.

194 Section 7. Consulting physician confirmation.

195 (1) Before a patient may be considered a qualified patient under this chapter the
196 consulting physician shall:

197 (a) examine the patient and the patient's relevant medical records;

198 (b) confirm in writing the attending physician's diagnosis that the patient is suffering
199 from a terminal illness; and

200 (c) verify that the patient:

201 (i) is capable;

202 (ii) is acting voluntarily; and

203 (iii) has made an informed decision.

204 Section 8. Counseling referral.

205 (1) An attending physician shall refer a patient, who has requested medication under this
206 chapter, to counseling to determine that the patient is not suffering from a psychiatric or
207 psychological disorder or depression causing impaired judgment. The licensed mental health
208 professional must submit a final written report to the prescribing physician.

209 (2) The medication may not be prescribed until the individual performing the counseling
210 determines that the patient is not suffering from a psychiatric or psychological disorder or
211 depression causing impaired judgment.

212 Section 9. Informed decision required.

213 A qualified patient may not receive a prescription for medication pursuant to this chapter
214 unless the patient has made an informed decision as defined in section 1. Immediately before
215 writing a prescription for medication under this chapter the attending physician shall verify that
216 the qualified patient is making an informed decision.

217 Section 10. Family notification recommended -- not required.

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

221 Section 11. Medical record documentation requirements.

222 The following items must be documented or filed in the patient's medical record:

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

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

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

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

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

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

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

234 (8) a note by the attending physician indicating:

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

236 (b) the steps taken to carry out the request, including a notation of the medication
237 prescribed.

238 Section 12. Disposal of unused medications.

239 Any medication dispensed under this chapter that was not self-administered shall be
240 disposed of by lawful means.

241 Section 13. Data Collection.

242 Physicians are required to keep a record of the number of requests; number of
243 prescriptions written; number of requests rescinded; and the number of qualified patients that
244 took the medication under this chapter. This data shall be reported to the Department of Public
245 Health annually, which will subsequently be made available to the public.

246 Section 14. Effect on wills, contracts, insurance, annuities, statutes and regulations.

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

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

252 (3) A qualified patient's act of self-administering medication obtained pursuant to this act
253 shall not constitute suicide or have an effect upon any life, health, or accident insurance or
254 annuity policy.

255 (4) Actions taken by health care providers and patient advocates supporting a qualified
256 patient exercising his or her rights pursuant to this chapter, including being present when the
257 patient self-administers medication, shall not for any purpose, constitute elder abuse, neglect,
258 assisted suicide, mercy killing, or homicide under any civil or criminal law or for purposes of
259 professional disciplinary action.

260 (5) State regulations, documents and reports shall not refer to the practice of aid in dying
261 under this chapter as "suicide" or "assisted suicide."

262 Section 15. Provider Participation.

263 (1) A health care provider may choose whether to voluntarily participate in providing to a
264 qualified patient medication pursuant to this act and is not under any duty, whether by contract,
265 by statute, or by any other legal requirement, to participate in providing a qualified patient with
266 the medication.

267 (2) A health care provider or professional organization or association may not subject an
268 individual to censure, discipline, suspension, loss of license, loss of privileges, loss of
269 membership, or other penalty for participating or refusing to participate in providing medication
270 to a qualified patient pursuant to this chapter.

271 (3) If a health care provider is unable or unwilling to carry out a patient's request under
272 this chapter and the patient transfers care to a new health care provider, the prior health care
273 provider shall transfer, upon request, a copy of the patient's relevant medical records to the new
274 health care provider.

275 (4) (a) Health care providers shall maintain and disclose to consumers upon request
276 their written policies outlining the extent to which they refuse to participate in providing to a
277 qualified patient any medication pursuant to this act.

278 (b) The required consumer disclosure shall at minimum:

279 (i) include information about the Massachusetts End of Life Options Act;

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

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

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

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

288 (vi) inform consumers that the cost of such transfer will be borne by the transferring
289 provider;

290 (vii) describe the internal and external consumer complaint processes available to patients
291 affected by the provider's objections.

292 (c) The consumer disclosure shall be provided:

293 (i) to any individual upon the request;

294 (ii) to a patient or resident or their authorized appointed health care agents, guardians,
295 surrogate decision-maker upon admission or at the time of initial receipt of health care.

296 Section 16. Liabilities.

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

301 (2) An individual who coerces or exerts undue influence on a patient to request
302 medication to end the patient's life, or to destroy a rescission of a request, shall be guilty of a

303 felony punishable by imprisonment in the state prison for not more than three years or in the
304 house of correction for not more than two and one-half years or by a fine of not more than one
305 thousand dollars or by both such fine and imprisonment.

306 (3) Nothing in this act limits further liability for civil damages resulting from other
307 negligent conduct or intentional misconduct by any individual.

308 (4) The penalties in this chapter do not preclude criminal penalties applicable under other
309 law for conduct inconsistent with the provisions of this act.

310 Section 17. Claims by governmental entity for costs incurred.

311 A governmental entity that incurs costs resulting from a qualified patient self-
312 administering medication in a public place while acting pursuant to this chapter may submit a
313 claim against the estate of the patient to recover costs and reasonable attorney fees related to
314 enforcing the claim.

315 Section 18. Construction.

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

318 Section 19. Severability.

319 If any provision of this act or its application to any individual or circumstance is held
320 invalid, the remainder of the act or the application of the provision to other individuals or
321 circumstances is not affected.