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New Jersey Enacts Death with Dignity Law

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New Jersey health care providers should be aware that a new state law will allow mentally capable, terminally ill adults to get a doctor's prescription for the self-administration of medication which would result in the patient's peaceful death. The law, entitled the "Aid in Dying for the Terminally Ill Act" (A1504/S1072)("Act"), will go into effect on August 1, 2019.

In order to obtain the prescription, the patient must be terminally ill, over 18 years old, reside in New Jersey and have the capacity to make an informed request for the medication. The Act defines "terminally ill" as the terminal stage of an irreversibly fatal illness, disease or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six (6) months or less. The patient's condition, diagnosis and capacity to make the request must be reviewed and agreed upon by both the attending physician, who the Act defines as the physician who has primary responsibility for the patient's treatment and care, and a qualified consulting physician. The attending physician is responsible for informing the patient of the risks associated with taking the medication and the probable result. The attending physician must also discuss alternative or concurrent treatment opportunities, including palliative, hospice care and pain control, and recommend that next of kin be notified of the request. If the attending or the consulting physician believes that the patient is suffering from a psychiatric or psychological disorder that impairs judgment, they must refer the patient to a mental health professional to determine if the patient is capable of making this decision.

Due to the sensitive and final nature of the choice involved, the Act provides that certain safeguards be met for the prescription request to be processed. First, the patient must make a total of three (3) requests, two (2) of which are oral and made at least 15 days apart and one (1) of which is written. Next, the written request must be in substantial accord with the version of the form set forth in the Act, which includes the patient's statement requesting the physician to provide the prescription so that "I may self-administer to end my life in a humane and dignified manner and to contact any pharmacist as necessary to fill the prescription."

Also, the written request must be witnessed by at least two (2) witnesses who can attest that the patient's decision is informed and voluntary. A witness cannot be anyone related to or in a position

to benefit from the death of the patient. The Act also prohibits the attending physician, or the owner, operator or employee of a health care facility, unless it is a long term care facility where the patient is receiving treatment or is a resident, from acting as witnesses.

Finally, at least 48 hours must elapse between the attending physician's receipt of the patient's written request and the writing of a prescription, and at least 15 days must have elapsed between the initial oral request and the prescription. The attending physician must specifically offer the patient an opportunity to rescind the decision when the second oral request is made, but the patient can change his or her decision at any time without any inquiry as to his or her state of mind. Once the compliant request is duly made and processed, the attending physician may dispense the medication directly, or if the patient consents in writing, transmit the prescription to a pharmacist for the patient or the patient's representative to pick up directly from the pharmacy. The Act specifically requires that the attending physician keep appropriate medical records and documentation verifying compliance with these requirements.

The health care provider is not obligated to carry out the patient's request and may refuse without penalty as long as all relevant medical records are made readily available to any provider to whom the patient may then decide to transfer for treatment. The law also protects providers and persons participating in the compliant request from civil or criminal liability for assisted suicide, suicide, mercy killing or elder abuse, unless the acts or omissions involved constitute gross negligence, willful misconduct or recklessness. All relevant licensing authorities are also directed to review their rules and regulations to ensure that a provider's participation does not affect the licenses of those health care facilities and professionals who either respond to or refuse the patient's compliant request. In order to protect patients from becoming victims, the Act also establishes that the falsification or forgery of a request for the prescription of medication, or the exertion of undue influence on the patient to request the medication, will be considered a crime. The Act also protects the patient's voluntary decisionmaking by prohibiting insurance policies, annuities and wills from including conditions or restrictions based on the request for medication.

State agencies have been authorized to take any anticipatory administrative action necessary to implement the Act, so further regulatory activity is expected prior to the August 1, 2019 effective date.

For more information relating to providers, contact Divya Srivastav-Seth at dss@spsk.com or 973-540-7855, or any member of the Health Care Law Group. For more information relating to individual patients, contact any member of the Trusts and Estates Practice Group.

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