

New Jersey Enacts Aid in Dying Act

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New Jersey recently enacted the Aid in Dying for the Terminally Ill Act (the Act), which took effect on August 1, 2019. Under the Act, New Jersey residents with an irreversibly fatal disease or those with a prognosis of death within six months or less can request life-ending medication(s) from their physician. However, patients falling into this category have a number of hoops to jump through before they can literally take their death into their own hands.

First, the patient must prove to the attending physician that he or she is a New Jersey resident; acceptable proof of residency includes a valid state-issued ID, a voter registration card, a recent New Jersey tax filing or “any other government record that the attending physician reasonably believes to demonstrate the individual’s current residency in [New Jersey].”

Next, two physicians must evaluate the patient to determine that he or she is terminally ill but retains the requisite capacity to make the end-of-life decision. Interestingly, if the patient appears to lack capacity due to mental illness, the physician must refer the patient to a psychiatrist or psychologist who shall make the final determination of capacity. During this stage, physicians are also required to discuss the patient’s prognosis, review the inherent risks associated with the life-ending medication(s) as well as available alternatives such as palliative and hospice care and advise the patient to notify his or her next of kin of the request.

The patient must then make two oral requests for the end-of-life medication from his or her attending physician, at least fifteen days apart, at which time the physician must offer the patient an opportunity to rescind his or her request. The patient must also submit one written request which is to be signed and dated by the patient in the presence of two witnesses. For purposes of the Act, at least one of witnesses cannot be: related to the patient by blood, marriage or adoption; entitled to any portion of the patient’s estate under the patient’s Will or by the state’s intestacy statute; or an owner, operator or employee of the healthcare facility. The patient’s attending physician is also not permitted to serve as a witness.

Once the aforementioned steps have been completed (all of which must be documented by the patient’s physician and included in the patient’s medical record), a patient can receive, and begin self-administration of, the end-of-life medication(s).

It is important to note that because the Act requires the patient to have capacity to request end-of-life medication, such a request cannot be drafted into a living will or advance medical directive (which is an estate planning document that essentially “preauthorizes” an Agent to make healthcare decisions in certain circumstances, usually when the principal is incapacitated). Thus, an agent appointed under a living will or advance medical directive can only communicate a

request for end-of-life medication to the attending physician if the patient requests that the agent do so. New Jersey residents should be aware of this significant distinction between the Act's provisions and those of a living will or advance medical directive.

At this time, Colorado, Hawaii, Maine, Oregon, Vermont, Washington and the District of Columbia are the only other states that have similar "right to die" laws.

If you have questions or would like more information, contact Franca Tavella (tavellaf@whiteandwilliams.com; 215.864.6293) or another member of the Tax and Estates Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a lawyer concerning your own situation and legal questions.