

SENATE No. 1331

The Commonwealth of Massachusetts

PRESENTED BY:

Joanne M. Comerford

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>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	
<i>Anne M. Gobi</i>	<i>Worcester and Hampshire</i>	<i>1/18/2023</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/18/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/20/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>1/24/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/26/2023</i>
<i>Jacob R. Oliveira</i>	<i>Hampden, Hampshire and Worcester</i>	<i>1/27/2023</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/27/2023</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>1/27/2023</i>
<i>William N. Brownsberger</i>	<i>Suffolk and Middlesex</i>	<i>1/27/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/30/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2023</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/2/2023</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/6/2023</i>
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>2/6/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/9/2023</i>
<i>Cynthia Stone Creem</i>	<i>Norfolk and Middlesex</i>	<i>2/14/2023</i>

<i>Adam Scanlon</i>	<i>14th Bristol</i>	<i>2/15/2023</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/15/2023</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/22/2023</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/1/2023</i>
<i>Edward R. Philips</i>	<i>8th Norfolk</i>	<i>3/3/2023</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>3/9/2023</i>

SENATE No. 1331

By Ms. Comerford, a petition (accompanied by bill, Senate, No. 1331) of Joanne M. Comerford, Anne M. Gobi, Mindy Domb, Jack Patrick Lewis and other members of the General Court for legislation relative to end of life options. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1384 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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 are hereby amended by inserting after Chapter 201F the following
2 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 “Attending physician”, a physician who has primary responsibility for the care of the
9 patient and treatment of the patient’s terminal disease.

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

12 “Counseling”, one or more consultations as necessary between a licensed mental health
13 care professional and a patient for the purpose of determining that the patient is capable and not
14 suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

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

20 “Health care provider”, an individual licensed, certified, or otherwise authorized or
21 permitted by law to diagnose and treat medical conditions, and prescribe and dispense
22 medication, including controlled substances.

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

29 “**Informed decision**”, a decision by a mentally capable individual to request and obtain a
30 prescription for medication pursuant to this chapter that the individual may self-administer to
31 bring about a peaceful death, after being fully informed by the attending physician and
32 consulting physician of:

33 (a) The individual’s diagnosis and prognosis;

34 (b) The potential risk associated with taking the medication to be prescribed;

35 (c) The probable result of taking the medication to be prescribed;

36 (d) The feasible end-of-life care and treatment options for the individual’s terminal
37 disease, including but not limited to comfort care, palliative care, hospice care and pain control,
38 and the risks and benefits of each as defined in section 227 of chapter 111; and

39 (e) The individual’s right to withdraw a request pursuant to this chapter, or consent for
40 any other treatment, at any time.

41 ”**Licensed mental health care professional**”, a treatment provider who is a psychiatrist,
42 psychologist, psychiatric social worker or psychiatric nurse and others who by virtue of
43 education, credentials, and experience are permitted by law to evaluate and care for the mental
44 health needs of patients.

45 “**Medical aid in dying**”, the practice of evaluating a request, determining qualification,
46 performing the duties in sections 6, 7 and 8, and providing a prescription to a qualified individual
47 pursuant to this chapter.

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

51 “Medication”, aid in dying medication.

52 “Mentally capable”, in the opinion of the attending physician or licensed mental health
53 care professional, the individual requesting medication pursuant to this chapter has the ability to
54 make and communicate an informed decision.

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

59 “Patient”, an individual who has received health care services from a health care provider
60 for treatment of a medical condition.

61 “Physician”, a doctor of medicine or osteopathy licensed to practice medicine in
62 Massachusetts by the board of registration in medicine.

63 “Qualified patient”, a mentally capable adult who is a resident of Massachusetts, has been
64 diagnosed as being terminally ill, and has satisfied the requirements of this chapter.

65 “Resident”, an individual who demonstrates residency in Massachusetts by presenting
66 one form of identification which may include but is not limited to:

67 (a) possession of a Massachusetts driver’s license;

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

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

70 (d) proof that the individual has resided in a Massachusetts health care facility for at least
71 3 months;

72 (e) computer-generated bill from a bank or mortgage company, utility company, doctor,
73 or hospital;

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

76 (g) a MassHealth or Medicare benefit statement; or

77 (h) filing of a Massachusetts tax return for the most recent tax year.

78 “Self-administer”, a qualified patient’s act of ingesting medication obtained under this
79 chapter.

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

82 Section 2. (a) A patient wishing to receive a prescription for medication under this
83 chapter shall make an oral request to the patient's attending physician. No less than 15 days after
84 making the request the patient shall submit a written request to the patient's attending physician
85 in substantially the form set in section 4.

86 (b) A terminally ill patient may voluntarily make an oral request for medical 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 mentally 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 medical aid in dying and a prescription for
93 medication that the patient can choose to self-administer to bring about a peaceful death if the
94 patient:

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

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

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

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

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

100 Section 3. (a) A valid written request must be witnessed by at least two individuals who,
101 in the presence of the patient, attest that to the best of their knowledge and belief that patient is:

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

103 (2) acting voluntarily; and

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

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

116 Section 4.

117 REQUEST FOR MEDICAL AID IN DYING MEDICATION PURSUANT TO THE

118 MASSACHUSETTS END OF LIFE OPTIONS ACT

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

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

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

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

123 I have been fully informed of my diagnosis, prognosis, the nature of the medical aid in

124 dying medication to be prescribed and potential associated risks, the expected result, and the

125 feasible alternatives and additional treatment opportunities, including, but not limited to, comfort
126 care, palliative care, hospice care, and pain control.

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

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

136 Signed: Dated:

137 DECLARATION OF WITNESSES

138 By signing below, on the date the patient named above signs, we declare that the patient
139 making and signing the above request is personally known to us or has provided proof of
140 identity, and appears not to be under duress, fraud, or undue influence.

141 Printed Name of Witness 1:

142 Signature of Witness 1/Date:

143 Printed Name of Witness 2:

144 Signature of Witness 2/Date:

145 Section 5. (a) A qualified patient may at any time rescind the request for medication
146 under this chapter without regard to the qualified patient's mental state.

147 (b) A prescription for medication under this chapter may not be written without the
148 attending physician offering the qualified patient an opportunity to rescind the request for
149 medication.

150 Section 6. (a) The attending physician shall:

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

152 (i) is a resident of this state;

153 (ii) is terminally ill;

154 (iii) is mentally capable; and

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

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

157 (i) the patient's medical diagnosis;

158 (ii) the patient's prognosis;

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

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

161 (v) the feasible alternatives and additional treatment opportunities, including, but not
162 limited to, palliative care as defined in section 227 of chapter 111.

- 163 (3) refer the patient to a consulting physician to medically confirm the diagnosis and
164 prognosis and for a determination that the patient is mentally capable and is acting voluntarily;
- 165 (4) refer the patient for counseling pursuant to section 8;
- 166 (5) ensure that sections 6 through 8, inclusive, are followed in chronological order;
- 167 (6) have a prior clinical relationship with the patient, unless the patient's primary care
168 physician is unwilling to participate;
- 169 (7) recommend that the patient notify the patient's family or any person who plays a
170 significant role in an individual's life;
- 171 (8) recommend that the patient complete a Medical Order for Life-Sustaining Treatment
172 form;
- 173 (9) counsel the patient about the importance of:
- 174 (i) having another individual present when the patient takes the medication prescribed
175 under this chapter; and
- 176 (ii) not taking the medication in a public place;
- 177 (10) inform the patient that the patient may rescind the request for medication at any time
178 and in any manner;
- 179 (11) verify, immediately prior to writing the prescription for medication, that the patient
180 is making an informed decision;
- 181 (12) educate the patient on how to self-administer the medication;

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

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

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

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

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

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

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

197 Section 7. (a) Before a patient may be considered a qualified patient under this chapter
198 the consulting physician shall:

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

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

- 202 (3) verify that the patient:
- 203 (i) is mentally capable;
- 204 (ii) is acting voluntarily; and
- 205 (iii) has made an informed decision.

206 Section 8. (a) An attending physician shall refer a patient who has requested medical aid
207 in dying medication under this chapter to counseling to determine that the patient is not suffering
208 from a psychiatric or psychological disorder or depression causing impaired judgment. The
209 licensed mental health professional shall review the medical history of the patient relevant to the
210 patient's current mental health and then shall submit a final written report to the prescribing
211 physician.

212 (b) The medical aid in dying medication may not be prescribed until the individual
213 performing the counseling determines that:

- 214 (1) the patient is not suffering from a psychiatric or psychological disorder or depression
215 causing impaired judgment; and
- 216 (2) there is no reason to suspect coercion in the patient's decision-making process.

217 Section 9. A qualified patient may not receive a prescription for medical aid in dying
218 medication pursuant to this chapter unless the patient has made an informed decision.
219 Immediately before issuing a prescription for medical aid in dying medication under this chapter
220 the attending physician shall verify that the qualified patient is making an informed decision.

221 Section 10. The attending physician shall recommend that a patient notify the patient's
222 family or any person who plays a significant role in an individual's life of the patient's request
223 for medical aid in dying medication pursuant to this chapter. A request for medical aid in dying
224 medication shall not be denied because a patient declines or is unable to notify the family or any
225 person who plays a significant role in an individual's life.

226 Section 11. The following items shall be documented or filed in the patient's medical
227 record:

228 (1) the determination and the basis for determining that a patient requesting medical aid
229 in dying medication pursuant to this chapter is a qualified patient;

230 (2) all oral requests by a patient for medical aid in dying medication;

231 (3) all written requests by a patient for medical aid in dying medication made pursuant to
232 sections 3 through 5, inclusive;

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

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

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

238 (7) the attending physician's offer before prescribing the medical aid in dying medication
239 to allow the qualified patient to rescind the patient's request for the medication;

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

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

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

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

246 Section 12. Any medical aid in dying medication dispensed under this chapter that was
247 not self-administered shall be disposed of by lawful means. The medication dispenser shall be
248 responsible for informing the individual collecting the medication what disposal by lawful means
249 entails.

250 Section 13. Physicians shall keep a record of the number of requests for medical aid in
251 dying medication; number of prescriptions written; number of requests rescinded; the number of
252 qualified patients that took the medication under this chapter; the general demographic and
253 socioeconomic characteristics of the patient, and any physical disability of the patient. This data
254 shall be reported to the department of public health annually, and shall subsequently be made
255 available to the public.

256 Section 14. (a) Any provision in a contract, will, or other agreement, whether written or
257 oral, to the extent the provision would affect whether a patient may make or rescind a request for
258 medical aid in dying medication pursuant to this chapter, is not valid.

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

261 (c) A qualified patient's act of self-administering medical aid in dying medication
262 obtained pursuant to this act shall not constitute suicide or have an effect upon any life, health, or
263 accident insurance or annuity policy.

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

268 (e) State regulations, documents and reports shall not refer to the practice of medical aid
269 in dying under this chapter as "suicide" or "assisted suicide."

270 Section 15. (a) A health care provider may choose not to practice medical aid in dying.

271 (b) A health care provider or professional organization or association may not subject an
272 individual to censure, discipline, suspension, loss of license, loss of privileges, loss of
273 membership, or other penalty for participating or refusing to participate in providing medical aid
274 in dying medication to a qualified patient under this chapter.

275 (c) If a health care provider is unable or unwilling to carry out a patient's request under
276 this chapter and the patient transfers care to a new health care provider, the prior health care
277 provider shall transfer, upon request, a copy of the patient's relevant medical records to the new
278 health care provider.

279 (d) (1) Health care providers shall maintain and disclose upon request their written
280 policies outlining the extent to which they refuse to participate in providing to a qualified patient
281 any medical aid in dying medication under this chapter.

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

283 (i) include information about this chapter;

284 (ii) identify the specific services in which the health care provider refuses to participate;

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

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

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

292 (vi) inform consumers that the cost of transferring records will be borne by the
293 transferring provider.

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

295 (d) A health care entity that prohibits health care providers from qualifying, prescribing,
296 or dispensing medication pursuant to this chapter while they are performing duties for the entity
297 shall provide notice of such policy to the public by posting the information on its website.

298 Section 16. (a) Purposely or knowingly altering or forging a request for medical aid in
299 dying medication under this chapter without authorization of the patient or concealing or
300 destroying a rescission of a request for medical aid in dying medication is punishable as a felony
301 if the act is done with the intent or effect of causing the patient's death.

302 (b) An individual who coerces or exerts undue influence on a patient to request medical
303 aid in dying medication, or to destroy a rescission of a request, shall be guilty of a felony
304 punishable by imprisonment in the state prison for not more than 3 years or in the house of
305 correction for not more than 2½ years or by a fine of not more than \$1,000 or by both such fine
306 and imprisonment.

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

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

311 Section 17. A governmental entity that incurs costs resulting from a qualified patient self-
312 administering medical aid in dying medication in a public place while acting pursuant to this
313 chapter may submit a claim against the estate of the patient to recover costs and reasonable
314 attorney fees related to enforcing the claim.

315 Section 18. If an emergency medical provider finds a patient who has self-administered
316 medical aid in dying medication, they shall follow standard resuscitation protocol. If a Medical
317 Order for Life-Sustaining Treatment or other legally recognized do-not-resuscitate order is
318 found, then the medical provider shall follow the directives of the form.

319 Section 19. Nothing in this chapter may be construed to authorize a physician or any
320 other individual to end a patient's life by lethal injection, mercy killing, assisted suicide, or active
321 euthanasia.

322 Section 20. If any provision of this chapter or its application to any individual or
323 circumstance is held invalid, the remainder of the act or the application of the provision to other
324 individuals or circumstances is not affected.