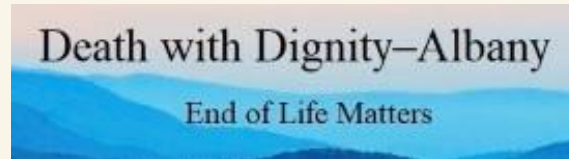


Note

In the Zoom presentation on October 18, 2021, some of the slides were revealed gradually, for ease of reading. This version condenses the original slides, but contains all the presented material.

Medical Aid in Dying Legislation

Everything You Need to Know



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Death with Dignity-Albany



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Compassion & Choices

History and Structure of the Laws

The Proposed New York Law

Appendix: MAID in Canada

Thad Mirer

Death with Dignity—Albany

The Setting

Currently in New York, a person who is close to the end of life can seek hospice and palliative care to alleviate pain and suffering while waiting to die. When this is not sufficient, a person seeking to hasten death has rather unattractive options: it possible to stop eating and drinking (VSED), and it is possible to commit suicide. What can be done?

If you ask your doctor for life-ending medicine,
there is a problem: the assisted-suicide law

“A person is guilty of manslaughter in the second
degree when ...

3. He intentionally causes or aids another
person to commit suicide.”

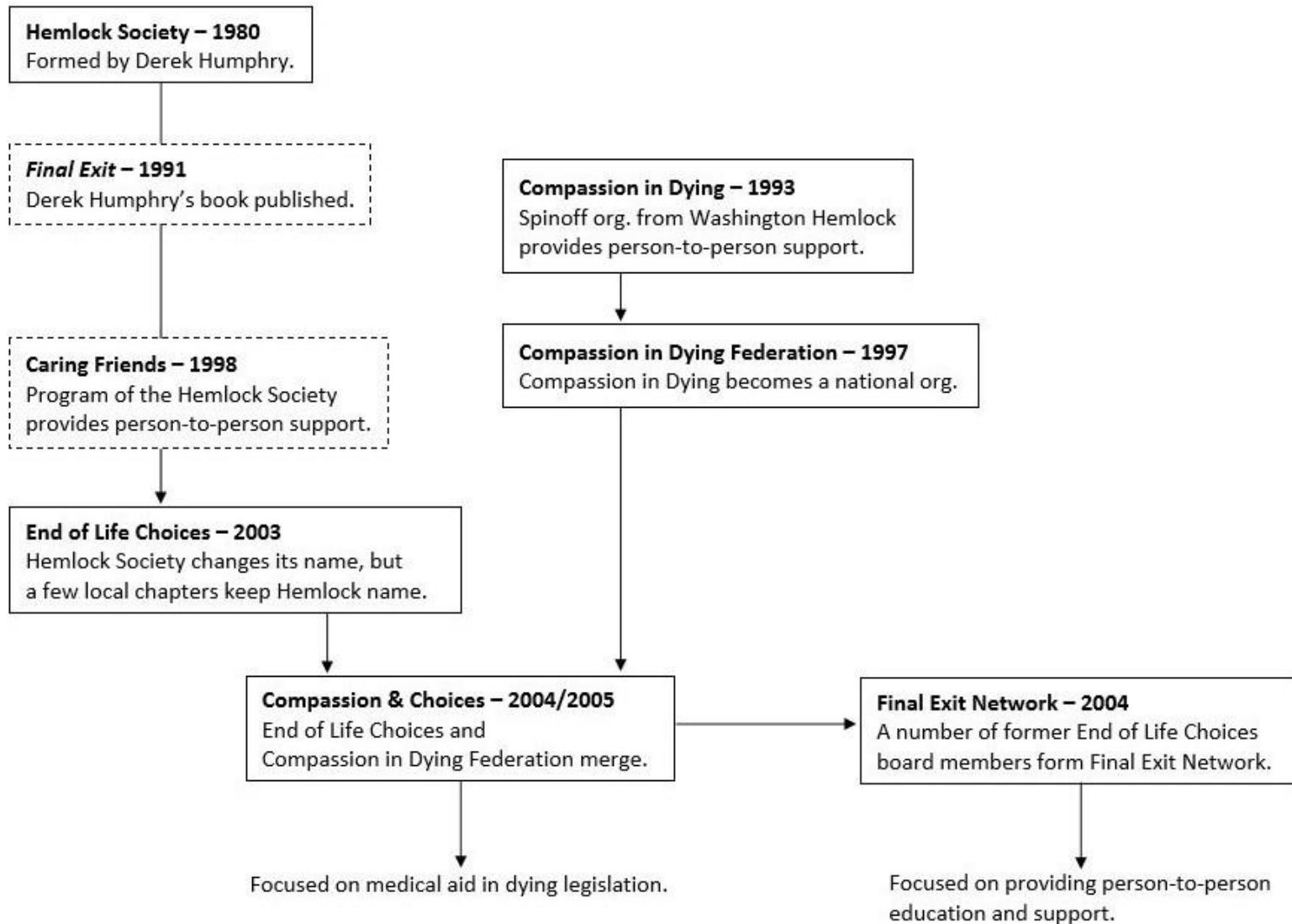
1997: The US Supreme Court ruled 9-0 that a
New York ban on physician-assisted suicide was
constitutional, even for patients who were
terminally ill and/or in great pain. (Vacco v Quill)

Expanding End-of-Life Options

More than 20 years ago Oregon adopted the first state law that sets up a procedure by which a person can ask their doctor for life-ending medication, and the doctor can prescribe these drugs without bearing any legal or professional sanction. The law includes carefully crafted procedures and safeguards to assure that it operates as intended, for mentally competent adults with a terminal illness.

We call this “medical aid in dying” now.

Origins



Where Medical Aid in Dying is Authorized (source: Compassion&Choices)

State	Name of Act	Method	Effective Date
Oregon	Oregon Death with Dignity Act	Ballot*	10/27/1997*
Washington	Washington Death with Dignity Act	Ballot	03/05/2009
Montana	<i>Baxter V. Montana</i>	Courts	12/31/2009
Vermont	Vermont Patient Choice and Control at the End of Life Act	Legislature	05/20/2013
California	California End of Life Option Act	Legislature	06/09/2016
Colorado	Colorado End of Life Options Act	Ballot	12/16/2016
Wash D.C.	D.C. Death With Dignity Act	Legislature	02/18/2017
Hawai'i	Hawai'i Our Care, Our Choice Act	Legislature	01/01/2019
New Jersey	New Jersey Medical Aid in Dying for the Terminally Ill Act	Legislature	08/01/2019
Maine	Maine Death With Dignity Act	Legislature	09/19/2019
New Mexico	New Mexico Elizabeth Whitefield End-of-Life Options Act	Legislature	06/20/2021

Action in Oregon

1989: First death with dignity bill is introduced in legislature.

November, 1994: By an initiative, voters approve the Oregon Death with Dignity Act, 51.3% to 48.7%. A court challenge delays implementation.

February, 1997: US Court of Appeals dismisses the law suit (*Lee v. State of Oregon*).

October, 1997: The Oregon law is officially implemented.

November, 1997: In a legislatively introduced referendum, Oregonians vote against repeal of the law, 59.9% to 40.1%.

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Reaction in Washington DC

In December 1997 the head of the DEA says that Oregon physicians participating under the law's guidelines will be in violation of the Controlled Substances Act. But the U.S. Attorney General later reverses this (April 1998).

In 1999 The U.S. House of Representatives passes the Pain Relief Promotion Act (271 to 156) to bar physicians from prescribing medications as allowed by the Oregon Death with Dignity Act. But the bill did not reach the Senate floor.

Reaction in Washington DC

November, 2001: US Attorney General attempts to block the law, by authorizing DEA agents to investigate and prosecute doctors prescribing under the law. A court suit soon leads to an injunction against his order.

January, 2006: US Supreme Court rules (*Gonzales v. Oregon*) that the AG overstepped his authority, thereby upholding the Oregon law.

Other States Use the Oregon Law As the Model for Theirs

THE OREGON DEATH WITH DIGNITY ACT OREGON REVISED STATUTES

127.800 – 127.995

Note: The division headings, subdivision headings and leadlines for 127.800 to 127.890, 127.895 and 127.897 were enacted as part of Ballot Measure 16 (1994) and were not provided by Legislative Counsel.

(General Provisions) **(Section 1)**

127.800 §1.01. Definitions.

The following words and phrases, whenever used in ORS 127.800 to 127.897, have the following meanings:

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.
- (3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.
- (4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.
- (5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.
- (6) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.
- (7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:
 - (a) His or her medical diagnosis;
 - (b) His or her prognosis;
 - (c) The potential risks associated with taking the medication to be prescribed;
 - (d) The probable result of taking the medication to be prescribed; and
 - (e) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control.
- (8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

Major Common Elements of these Medical Aid in Dying Laws

Eligibility — the patient:

- is a resident of the state
- is 18 years of age or older
- has a terminal disease (with six months or less to live)
- has the capacity (capability) to make health care decisions
- is acting voluntarily
- is able to self-administer the medication

Requests — the patient:

- makes two oral requests to a physician for a prescription for life-ending medication
- provides a written request that follows the form in the law

The process:

- a (prescribing/attending) physician, a consulting physician, and possibly a mental health consultant, are involved
- both physicians assess whether the patient has a terminal disease and has the capacity to make an informed decision. If either physician doubts that the patient has this capacity, the patient must be referred to a mental health professional to determine the capacity
- a waiting period is built into the sequence of events

The law:

- makes clear that participation by doctors, pharmacists, and other health care providers is fully voluntary
- specifies a list of safeguards, designed to assure that the patient's actions are voluntary and fully informed
- permits the prescribing physician to write the prescription after all the procedural steps and safeguards have been completed

...

The law:

- stipulates that any action taken in accordance with the bill does not constitute suicide, assisted suicide, mercy killing, or homicide

The Role of the Attending Physician

Oregon set the pattern followed by most states.

Definition: “*Attending physician* means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.”

When agreeing to a patient's request, the attending physician performs all the responsibilities of following the procedure and becomes the prescriber.

What if the Attending Physician Declines?

Oregon: “If a health care provider is unable or unwilling to carry out a patient’s request under [this law], and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient’s relevant medical records to the new health care provider.”

A Different Approach

Vermont (2013):

Any physician licensed to practice in Vermont can be the prescriber or the consultant.

Separating the role of the prescriber (in the medical aid-in-dying procedure) from the care and treatment of the patient can eliminate obstacles to patients, especially in rural areas.

New York

The New York legislature has considered several bills concerning medical aid in dying [as early as 1995 (S 1683, S 5024-A, A 6333)]. Two bills were introduced early in the 2015–2016 legislative term, and they were later combined into a Medical Aid in Dying Act. That bill was passed in the Assembly Health Committee by a vote of 14 to 11 in May 2016 but did not proceed further.

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New York

A slightly revised version was introduced in January 2017. In the Spring of 2018, the Health Committee held public hearings in Albany and New York City.



New York

The bill was reintroduced in January 2019.

Governor Cuomo later expressed support, but no action was taken during the busy 2019 and 2020 sessions.

Early in 2021, the Medical Aid in Dying Act was reintroduced for the current term. The lead sponsors are Senator Diane Savino (D-Staten Island) and Assemblymember Amy Paulin (D-Westchester).

The Proposed New York Act

Medical Aid in Dying Act

State of New York
2021-2022 Regular Legislative Sessions

Assembly Bill Number A4321 Sponsor: Amy Paulin
Senate Bill Number S6741 Sponsor: Diane Savino

AN ACT to amend the public health law, in relation to a terminally ill patient's request for and use of medication for medical aid in dying

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "medical aid in dying act".

§ 2. The public health law is amended by adding a new article 28-F to read as follows:

ARTICLE 28-F

MEDICAL AID IN DYING

Section 2899-d. Definitions.

2899-e. Request process.

2899-f. Attending physician responsibilities.

2899-g. Right to rescind request; requirement to offer opportunity to rescind.

2899-h. Consulting physician responsibilities.

2899-i. Referral to mental health professional.

2899-j. Medical record documentation requirements.

The Proposed New York Act

The proposed Medical Aid in Dying Act for New York mostly follows the Oregon model and includes most of the major elements common to other states' laws. There are some interesting and innovative differences.

Eligibility:

- No residence requirement

The Proposed New York Act

The Process:

- One oral request is required — not two
- No waiting period between steps in the procedure

Together, these two provisions simplify and speed up the process, and for a dying person this can be very important.

Appendix

Medical Assistance in Dying in Canada

Carter v. Canada, Supreme Court of Canada
February 2015

The court noted that, at that time:

“[One section of the Criminal Code] says that everyone who aids or abets a person in committing suicide commits an indictable offence, and [another] says that no person may consent to death being inflicted on them. Together, these provisions prohibit the provision of assistance in dying in Canada.”

Carter v. Canada, Supreme Court of Canada

*And, then, the court issued the following
unanimous declaration and gave Parliament time
to enact enabling legislation:*

“[These provisions] unjustifiably infringe [the
Charter of Rights and Freedoms] and [they are
void] to the extent that they prohibit physician-
assisted death ...

Carter v. Canada, Supreme Court of Canada

for a competent adult person who

(1) clearly consents to the termination of life and

(2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.”

The Canadian MAID law and procedure

Parliament passed enabling legislation in June 2016 and revised it in March 2021

Eligibility — the person must:

1. Be eligible for government health services
2. Be 18 years of age or older
3. Be capable of making health care decisions

The Canadian MAID law and procedure

Parliament passed enabling legislation in June 2016 and revised it in March 2021

Eligibility — the person must:

4. Have a grievous and irremediable medical condition (meaning all of: have a serious illness, disease, or disability; be in an advanced state of irreversible decline; and experience intolerable physical or mental suffering)

The Canadian MAID law and procedure

Parliament passed enabling legislation in June 2016 and revised it in March 2021

Eligibility — the person must:

~~5. Have natural death that is reasonably foreseeable~~

* Effective March 2021, having a natural death that is reasonably foreseeable is no longer required

The Canadian MAID law and procedure

Parliament passed enabling legislation in June 2016 and revised it in March 2021

Eligibility:

6. If a mental illness is the only serious medical condition, the patient is not eligible

* Effective March 2023, serious mental illness will be included among the grievous and irremediable medical conditions that make a person eligible for MAID.

The Canadian MAID law and procedure

Options:

There are 2 types of medical assistance in dying available. They involve a physician or (in some provinces) a nurse practitioner who:

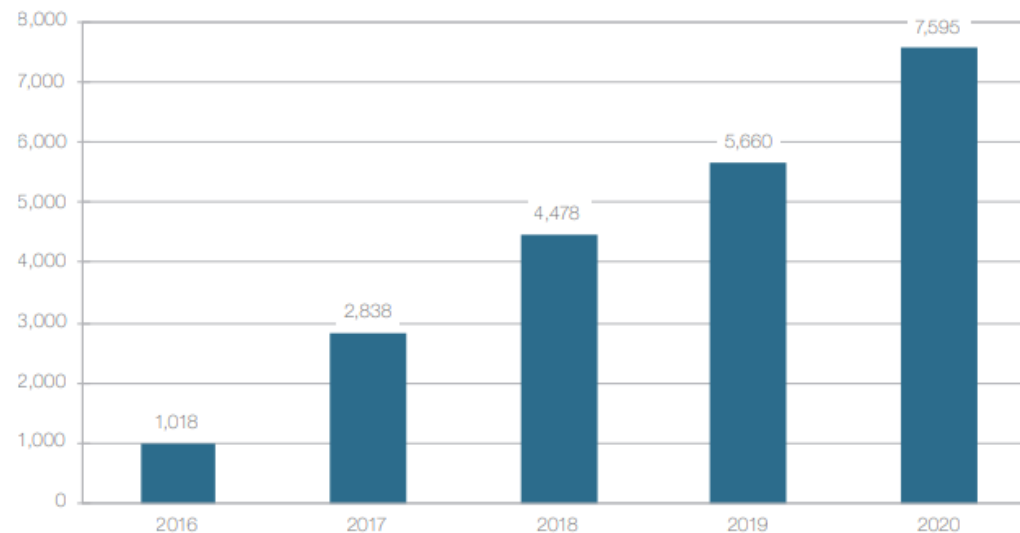
1. provides or prescribes a drug that the eligible person takes themselves, in order to bring about their own death
2. directly administers a substance that causes death, such as an injection of a drug (i.e., voluntary euthanasia)

The Canadian MAID law and procedure

Operation in 2020:

- 9,375 written requests and 7,595 reported deaths, accounting for 2.5% of all deaths in Canada

Chart 3.1: Total Reported MAID Deaths in Canada, 2016 to 2020



The Canadian MAID law and procedure

Operation in 2020:

- Nearly all MAID deaths were clinically administered (i.e., voluntary euthanasia); fewer than 7 cases were self-administered

