

HOUSE No. 1991

The Commonwealth of Massachusetts

PRESENTED BY:

Louis L. Kafka

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 affirming a terminally ill patient’s right to compassionate aid in dying.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>

<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>

HOUSE No. 1991

By Mr. Kafka of Stoughton, a petition (accompanied by bill, House, No. 1991) of Louis L. Kafka and others relative to providing care and comfort for the terminally ill. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1998 OF 2013-2014.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**
—————

An Act affirming a terminally ill patient’s right to compassionate aid in dying.

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 2010 Official Edition, is hereby
2 amended by inserting after Chapter 201F the following new chapter:-

3 CHAPTER 201G

4 MASSACHUSETTS COMPASSIONATE CARE FOR THE TERMINALLY ILL 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 humane
11 and dignified 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 persons familiar with the patient’s manner of
17 communicating if those persons 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 state licensed
21 psychiatrist or psychologist and a patient for the purpose of determining that the patient is
22 capable and not suffering from a psychiatric or psychological disorder or depression causing
23 impaired judgment.

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

29 “Health care provider” means a person licensed, certified, or otherwise authorized or
30 permitted by law to administer health care or dispense medication in the ordinary course of
31 business or practice of a profession, and includes a health care facility.

32 “Incapacitated person” means an individual who for reasons other than advanced age or
33 minor, has a clinically diagnosed condition that results in an inability to receive and evaluate
34 information or make or communicate decisions to such an extent that the individual lacks the
35 ability to meet essential requirements for physical health, safety, or self-care, even with
36 appropriate technological assistance. This term shall follow as described by Chapter 190B,
37 Article V, Section 5-101)

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

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

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

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

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

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

61 “Resident” means an individual who demonstrates residency in Massachusetts by means
62 that include but are not limited to:

63 (a) Possession of a Massachusetts driver’s license;

64 (b) Proof of registration to vote in Massachusetts;

65 (c) Proof that the individual owns or leases real property in Massachusetts;

66 (d) Proof that the individual has resided in a Massachusetts health care facility for at
67 least 3 months;

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

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

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

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

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

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

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

81 (1) A terminally ill patient may request aid in dying and a prescription for medication
82 they can chose to self-administer if the patient:

83 (a) is a competent adult;

84 (b) is a resident of Massachusetts;

85 (c) has been determined by the patient’s attending physician and by a consulting
86 physician to be terminally ill; and

87 (d) has voluntarily expressed the wish to receive medication which the patient may
88 choose to self-administer to bring about a humane and dignified death.

89 (2) A person may not qualify under this chapter if they have a guardian.

90 (3) A person may not qualify under this chapter solely because of age or disability.

91 Section 3. Form of the written request. Request process -- witness requirements.

92 (1) A patient wishing to receive a prescription for medication pursuant to this chapter
93 shall submit a written request to the patient's attending physician in substantially the form set
94 form in Section 4.

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

97 (a) competent;

98 (b) acting voluntarily; and

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

100 (3) At least one of the witnesses shall be a person who is not:

101 (a) a relative of the patient by blood, marriage, or adoption;

102 (b) a person who at the time the request is signed would be entitled to any portion of the
103 estate of the qualified patient upon death under any will or by operation of law; and

104 (c) an owner, operator, or employee of a health care facility where the qualified patient is

105 receiving medical treatment or is a resident.

106 (4) The patient's attending physician at the time the request is signed shall not serve as a
107 witness.

108 (5) If the patient is a patient in a long-term care facility at the time the written request is
109 made, one of the witnesses shall be an individual designated by the facility.

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

111 REQUEST FOR MEDICATION PURSUANT TO THE MASSACHUSETTS
112 COMPASSIONATE CARE FOR THE TERMINALLY ILL ACT

113 I, , am an adult of sound mind and a resident of the State of
114 Massachusetts. I am suffering from , which my attending physician has
115 determined is a terminal illness or condition which can reasonably be expected to cause death
116 within 6 months. This diagnosis has been medically confirmed as required by law.

117 I have been fully informed of my diagnosis, prognosis, the nature of medication to be
118 prescribed and potential associated risks, the expected result, and the feasible alternatives,
119 including comfort care, hospice care, and pain control.

120 I request that my attending physician prescribe medication that I may self-administer to
121 end my life in a humane and dignified manner and to contact any pharmacist to fill the
122 prescription.

123 INITIAL ONE:

124 I have informed my family of my decision and taken their opinions into
125 consideration.

126 I have decided not to inform my family of my decision.

127 I have no family to inform of my decision.

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

133 Signed: Dated:

134 DECLARATION OF WITNESSES

135 By initialing and signing below on the date the person named above signs, we declare
136 that the person making and signing the above request:

137 Witness 1 Witness 2

138 Initials Initials

- 139 1. Is personally known to us or has provided proof of identity;
140 2. Signed this request in our presence on the date of the person's signature;
141 3. Appears to be of sound mind and not under duress, fraud, or undue influence; and
142 4. Is not a patient for whom either of us is the attending physician.

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 qualified patient's request for
149 medication.

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

152 Section 6. Attending physician responsibilities.

153 (1) The attending physician shall:

154 (a) make the initial determination of whether an adult patient:

155 (i) is a resident of this state;

156 (ii) is terminally ill;

157 (iii) is competent; and

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

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

160 (i) his or her medical diagnosis;

161 (ii) his or her prognosis;

- 162 (iii) the potential risks associated with taking the medication to be prescribed;
- 163 (iv) the probable result of taking the medication to be prescribed; and
- 164 (v) the feasible alternatives or additional treatment opportunities, including but not
- 165 limited to palliative care as defined in Ch. 111 § 227.
- 166 (c) refer the patient to a consulting physician to medically confirm the diagnosis and
- 167 prognosis and for a determination that the patient is competent and is acting voluntarily;
- 168 (d) refer the patient for counseling pursuant to section 8;
- 169 (e) recommend that the patient notify the patient's next of kin;
- 170 (f) counsel the patient about the importance of:
- 171 (i) having another person present when the patient takes the medication prescribed
- 172 pursuant to this chapter; and
- 173 (ii) not taking the medication in a public place;
- 174 (h) inform the patient that the patient may rescind the request for medication at any time
- 175 and in any manner;
- 176 (i) verify, immediately prior to writing the prescription for medication, that the patient is
- 177 making an informed decision;
- 178 (j) fulfill the medical record documentation requirements of section 14;
- 179 (k) ensure that all appropriate steps are carried out in accordance with this chapter before

180 writing a prescription for medication for a qualified patient; and

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

184 or

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

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

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

191 (2) The attending physician may sign the patient's death certificate which shall state,
192 "Self-administered due to a terminal diagnosis of (the underlying terminal disease)," as the cause
193 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 determine that the patient is not suffering from a psychiatric or psychological disorder
207 or depression causing impaired judgment. The counselor must submit a final written report to
208 the prescribing physician.

209 (2) The medication may not be prescribed until the person 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 under
220 shall not be denied because a patient declines or is unable to notify the next of kin.

221 Section 11. Right to rescind request -- requirement to offer opportunity to rescind.

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

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

227 Section 12. Medical record documentation requirements.

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

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

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

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

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

235 (5) unless waived as provided in section 8, the consulting physician's diagnosis,
236 prognosis, and verification that the patient is competent, is acting voluntarily, and has made an
237 informed decision;

238 (6) the reasons for waiver of confirmation by a consulting physician, if a waiver was
239 made;

240 (7) a report of the outcome and determinations made during counseling, if performed

241 (8) the attending physician's offer before prescribing the medication to allow the qualified
242 patient to rescind the patient's request for the medication; and

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

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

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

247 Section 13. Disposal of unused medications.

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

250 Section 14. Data Collection.

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

255 Section 15. Effect on wills, contracts, insurance, annuities, statutes and regulations.

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

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

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

264 (4) 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 medication, shall not for any purpose, constitute elder abuse, neglect,
267 assisted suicide, mercy killing, or homicide under any civil or criminal law or for purposes of
268 professional disciplinary action.

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

271 Section 16. Provider Participation

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

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

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

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

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

288 (i) include information about the Massachusetts Compassionate Care for the Terminally
289 Ill Act;

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

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

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

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

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

300 (vii) describe the internal and external consumer complaint processes available to persons
301 affected by the provider's objections.

302 (c) The consumer disclosure shall be provided:

303 (i) to any person upon the request;

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

306 Section 17. Liabilities.

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

311 (2) A person who coerces or exerts undue influence on a patient to request medication to
312 end the patient's life, or to destroy a rescission of a request, shall be guilty of a felony punishable
313 by imprisonment in the state prison for not more than three years or in the house of correction for
314 not more than two and one-half years or by a fine of not more than one thousand dollars or by
315 both such fine and imprisonment.

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

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

320 Section 18. Claims by governmental entity for costs incurred.

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

325 Section 19. Construction.

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

328 Section 20. Severability.

329 If any provision of this act or its application to any person or circumstance is held invalid,
330 the remainder of the act or the application of the provision to other persons or circumstances is
331 not affected.