

S.77 - Side by Side comparison of House Proposal of Amendment and Senate Proposal of Amendment to House Proposal of Amendment

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Subject	House Proposal of Amendment	Senate Proposal of Amendment to House Proposal of Amendment
Definitions	<p>18 V.S.A. § 5281 defines:</p> <ul style="list-style-type: none"> • Capable • Consulting physician • Dispense • Evaluation • Good faith • Health care facility • Health care provider • Hospice care • Impaired judgment • Informed decision • Palliative care • Patient • Physician • Prescribing physician • Qualified patient • Terminal condition 	<p>18 V.S.A. § 5281 defines:</p> <ul style="list-style-type: none"> • Bona fide physician–patient relationship • Capable • Health care facility • Health care provider • Impaired judgment • Interested person • Palliative care • Patient • Physician • Terminal condition
Requests for Medication	<p>18 V.S.A. § 5282</p> <ul style="list-style-type: none"> • Patient must make oral request and written request, and then make a second oral request no less than 15 days after the first oral request. • Both oral requests must be made in presence of prescribing physician. • Prescribing physician must offer patient opportunity to rescind when patient makes second oral request. • Written request must be signed and dated by patient and witnessed by at least two people at least 18 years old who are not the patient’s 	<p>18 V.S.A. § 5283(a) (in part) Physician immunity for prescribing to a patient with a terminal condition medication to be self-administered to hasten death if physician affirms by documenting in patient’s medical record that the following occurred:</p> <ul style="list-style-type: none"> • Patient made oral request (1) • Patient made second oral request no fewer than 15 days after first oral request (2) • Both oral requests were made in presence of the physician (1, 2) • Physician offered patient an opportunity to rescind when patient made second oral request (3) • Written request was signed by patient in presence of two witnesses who were not interested persons, who were at least 18 years old, and

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	<p>physician, evaluator, relative, heir, or a hospital or nursing home employee, and who affirm that patient appears to understand nature of document and be free from duress/undue influence.</p> <ul style="list-style-type: none"> • Person who knowingly fails to comply with the witnessing requirements is subject to prosecution for false witnessing, which carries a penalty of up to 10 years in prison, up to a \$2,000 fine, or both. • Written request must be completed only after consulting physician's exam. • Guardian, conservator, and agent under an advance directive cannot act on behalf of a principal under the Act. 	<p>who affirmed that patient appeared to understand nature of document and be free from duress/undue influence (4)</p>
<p>Duties of prescribing physician</p>	<p>18 V.S.A. § 5283</p> <ul style="list-style-type: none"> • Determine whether patient: <ul style="list-style-type: none"> ○ has a terminal condition, based on physical exam and review of medical records ○ is capable of making health care decisions ○ has an advance directive ○ is enrolled in hospice care ○ is making informed decision ○ has made a voluntary request for medication ○ is a Vermont resident • Inform patient in person, verbally 	<p>18 V.S.A. § 5283(a) (in part) (in effect from passage through July 1, 2016)</p> <p>Physician immunity for prescribing to a patient with a terminal condition medication to be self-administered to hasten death if physician affirms by documenting in patient's medical record that the following occurred:</p> <ul style="list-style-type: none"> • Physician determined that patient: <ul style="list-style-type: none"> ○ had a terminal condition, based on physical exam and review of medical records ○ was capable of making health care decisions ○ was making informed decision ○ had made a voluntary request for medication ○ was a Vermont resident (5) • Physician informed patient in

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	<p>and in writing, of:</p> <ul style="list-style-type: none"> ○ Diagnosis ○ Prognosis ○ Range of treatment options ○ If patient not in hospice care, all feasible end-of-life services, including palliative care ○ Range of possible results, including potential risks of the medication ○ Probable result of taking the medication <ul style="list-style-type: none"> ● Refer patient to consulting physician for second opinion ● Verify that patient does not have impaired judgment or refer patient for evaluation ● With patient’s consent, consult with patient’s primary care physician ● Recommend patient notify next-of-kin or person with whom patient has a significant relationship ● Recommend that patient not be alone when taking medication and not take it in a public place ● Inform patient of opportunity to rescind at any time/manner ● Offer opportunity to rescind after patient’s second oral request ● Just before writing prescription, verify patient is making informed decision ● Fulfill medical record documentation requirements ● Before writing prescription, ensure all required steps carried out ● Either dispense medication directly to patient or inform a pharmacist and deliver prescription to the pharmacist, who will dispense to the patient/physician/patient’s agent 	<p>person, verbally and in writing, of:</p> <ul style="list-style-type: none"> ○ Diagnosis ○ Prognosis ○ Range of treatment options ○ If patient not in hospice care, all feasible end-of-life services, including palliative care ○ Range of possible results, including potential risks of the medication ○ Probable result of taking the medication (6) <ul style="list-style-type: none"> ● Physician referred patient to second physician for second opinion (7) ● Physician either verified no impaired judgment or referred patient for evaluation (8) ● If applicable, physician consulted with patient’s primary care physician with patient’s consent (9) <ul style="list-style-type: none"> ● Physician informed patient of opportunity rescind at any time/manner and offered opportunity to rescind after second oral request (10) ● Physician ensured all required steps carried out; confirmed just before writing prescription that patient was making an informed decision (11) ● Physician either dispensed medication directly to patient or informed pharmacist and delivered prescription to pharmacist, who dispensed to patient/physician/patient’s agent (13)

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Medical consultation (second opinion)	<p>18 V.S.A. § 5284</p> <ul style="list-style-type: none"> • Before patient can be qualified to receive medication, must see a consulting physician to confirm diagnosis of terminal condition and to confirm that patient is capable, is acting voluntarily, and has made informed decision • Consulting physician must either verify that patient does not have impaired judgment or refer patient for an evaluation 	<p>18 V.S.A. § 5283(a)(7) (in effect from passage through July 1, 2016) Physician must affirm referral to second physician for conformation of diagnosis, prognosis, and determination that patient was capable and was acting voluntarily</p>
Referral for evaluation	<p>18 V.S.A. § 5285</p> <ul style="list-style-type: none"> • If prescribing or counseling physician thinks patient may have impaired judgment, must refer patient for an evaluation • No medication will be prescribed until evaluator determines that patient does not have impaired judgment 	<p>18 V.S.A. § 5283(a)(8) (in effect from passage through July 1, 2016) Physician must affirm that either patient did not have impaired judgment or that physician referred patient for evaluation by psychiatrist, psychologist, or clinical social worker licensed in Vermont for confirmation that patient was capable and did not have impaired judgment</p>
Informed decision	<p>18 V.S.A. § 5286 Informed decision</p> <ul style="list-style-type: none"> • No prescription unless patient makes informed decision • Immediately before writing prescription, prescribing physician must verify patient is making an informed decision 	<p>18 V.S.A. § 5283(a)(11) (in effect from passage through July 1, 2016) Physician must confirm, immediately prior to writing prescription, that patient was making an informed decision</p>
Recommended notification	<p>18 V.S.A. § 5287 Prescribing physician must recommend that patient notify next-of-kin or person with whom patient has a significant relationship about request for medication Patient who does not notify cannot be refused medication</p>	[No similar provision]
Right to rescind	<p>18 V.S.A. § 5288</p> <ul style="list-style-type: none"> • Patient can rescind at any time and in any manner regardless of mental state 	<p>18 V.S.A. § 5283(a)(10) (in effect from passage through July 1, 2016) Physician must affirm that the physician informed the patient that the</p>

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	<ul style="list-style-type: none"> Prescribing physician must offer opportunity to rescind request before prescription can be written 	<p>patient can rescind at any time and in any manner and that the physician offered the patient an opportunity to rescind after second oral request</p>
Waiting period	<p>18 V.S.A. § 5289</p> <p>Prescribing physician must wait to write prescription for at least 48 hours after last of the following to occur:</p> <ul style="list-style-type: none"> Patient’s written request Patient’s second oral request Prescribing physician offering opportunity to rescind request 	<p>18 V.S.A. § 5283(a)(12) (in effect from passage through July 1, 2016)</p> <p>Physician must affirm that the physician wrote the prescription no fewer than 48 hours after the last of the following to occur:</p> <ul style="list-style-type: none"> Patient’s written request Patient’s second oral request Prescribing physician offering opportunity to rescind request
Medical record documentation	<p>18 V.S.A. § 5290</p> <p>Patient’s medical record must include:</p> <ul style="list-style-type: none"> Date, time, and wording of all oral requests for medication All written requests for medication Prescribing physician’s diagnosis, prognosis, and basis for determination that patient is capable, is acting voluntarily, has made informed decision Consulting physician’s diagnosis, prognosis, and verification that patient is capable, is acting voluntarily, has made informed decision Copy of advance directive Prescribing physician’s attestation that patient was enrolled in hospice care or that physician informed of all feasible end-of-life services Prescribing and consulting physicians’ verifications that patient either does not have impaired judgment or that one or both referred patient for evaluation Report of outcome and 	<p>18 V.S.A. § 5283(a)(14) (in effect from passage through July 1, 2016)</p> <p>Physician must record and file in the patient’s medical record:</p> <ul style="list-style-type: none"> Date, time, and wording of all oral requests for medication All written requests for medication Physician’s diagnosis, prognosis, and basis for determination that patient was capable, was acting voluntarily, and had made an informed decision Second physician’s diagnosis, prognosis, and verification that patient was capable, was acting voluntarily, had made informed decision Physician’s attestation that patient was enrolled in hospice care or that physician informed of all feasible end-of-life services Physician’s verification that patient either did not have impaired judgment or that physician referred patient for evaluation Report of outcome and

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	<p>determinations of evaluation, if applicable</p> <ul style="list-style-type: none"> • Date, time, and wording of offer to patient to rescind after second oral request • Prescribing physician’s note that all requirements have been satisfied and describing all actions to carry out request, including notation of medication prescribed 	<p>determinations of evaluation, if applicable</p> <ul style="list-style-type: none"> • Date, time, and wording of offer to patient to rescind after second oral request • Physician’s note that all requirements have been satisfied and describing all actions to carry out request, including notation of medication prescribed
Reporting requirement	<p>18 V.S.A. § 5291</p> <ul style="list-style-type: none"> • Department of Health must: <ul style="list-style-type: none"> ○ require physicians to file report covering all prerequisites for writing a prescription ○ require physicians to report annually the number of written requests received, regardless of whether actually wrote a prescription in each case ○ annually review medical records of patients who used the Act during prior year ○ adopt rules for collecting information about compliance with the Act and to enable Department to create annual report ○ generate and make available to the public (to extent not reasonable expected to violate anyone’s privacy) an annual statistical report of information collected, including: <ul style="list-style-type: none"> ▪ demographic information, including illness and health coverage ▪ any reasons given by patients for use of medication ▪ information about prescribing physicians 	<p>18 V.S.A. § 5283(a)(15) (<i>in effect from passage through July 1, 2016</i>)</p> <p>Physician must, after writing prescription, to promptly file a report with the Department of Health documenting completion of all requirements</p>

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	<ul style="list-style-type: none"> ▪ number of patients who did not take the medication prescribed and died of other causes ▪ number of times medication taken but failed to have intended effect ○ Individual medical information and reports are confidential and exempt from Public Records Act 	
Safe disposal of unused medications	<p>18 V.S.A. § 5292 Health Dept must adopt emergency and permanent rules for the safe disposal of unused medication</p>	<p>18 V.S.A. § 5292 Health Dept must adopt rules for the safe disposal of unused medication</p>
Prohibitions and contracts	<p>18 V.S.A. § 5293</p> <ul style="list-style-type: none"> • Nothing about the sale of, or rate charged for, a life, health, or accident insurance or annuity policy can depend on or be affected by a person making or rescinding a request for medication. • A patient’s act of taking the medication cannot have any effect on a life, health, or accident insurance or annuity policy. • Nothing about the sale of, or rate charged for, a medical malpractice policy can be conditioned on or affected by whether a physician is willing or unwilling to participate in providing medication to a qualified patient 	<p>18 V.S.A. § 5287</p> <ul style="list-style-type: none"> • No person or his or her beneficiaries shall be denied benefits under a life insurance policy for actions taken in accordance with this chapter • Nothing about the sale of, or rate charged for, a medical malpractice policy can be conditioned on or affected by whether a physician is willing or unwilling to participate in providing medication to a qualified patient
Limitations on actions	<p>18 V.S.A. § 5294</p> <ul style="list-style-type: none"> • No one can be subject to civil or criminal liability or professional disciplinary action for actions taken in good faith reliance on the Act • No one can be subject to civil or criminal liability solely being 	<p>18 V.S.A. § 5284 - No duty to aid A patient with a terminal condition who self-administers a lethal dose of medication is not a person exposed to grave physical harm and no one can be subject to civil or criminal liability solely for being present when a patient</p>

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	<p>present when the patient takes the medication</p> <ul style="list-style-type: none"> • No health care provider can subject a person to any penalty for actions taken in good faith reliance on the chapter • Prescribing physician providing medication does not constitute patient neglect • Patient’s request for medication cannot be sole basis for appointing a guardian/conservator • No health care provider is under any duty to participate in providing medication <ul style="list-style-type: none"> ○ If a health care provider is unwilling or unable to carry out a patient’s request for medication, he/she must transfer, on request, a copy of the patient’s relevant medical records to the new health care provider ○ Health care provider’s decision not to participate is not abandonment of the patient or unprofessional conduct • Not to be construed to limit liability for gross negligence, recklessness, or intentional misconduct 	<p>with a terminal condition self-administers a lethal dose of medication or for not acting to prevent the self-administration</p> <p>18 V.S.A. § 5285 - Limitations on actions</p> <ul style="list-style-type: none"> • A physician, nurse, pharmacist, or other person is not under any duty to participate in provision of lethal dose of medication • Health care facility or health care provider cannot subject a physician, nurse, pharmacist, or other person to any penalty for actions taken in good faith reliance on the chapter or on refusals to act under the chapter • Except as otherwise provided, nothing in the chapter should be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct <p>18 V.S.A. § 5283(b) Nothing in the section on the requirements for prescription and documentation shall be construed to limit civil or criminal liability for gross negligence, recklessness, or intentional misconduct</p>
Health care facility exception	<p>18 V.S.A. § 5295</p> <ul style="list-style-type: none"> • As long as it notifies the attending physician in writing of its policy, a health care facility may prohibit a physician from writing a prescription for a patient who: <ul style="list-style-type: none"> ○ is a resident of the facility, and ○ intends to use the medication on the facility’s premises • A physician who violates the 	<p>18 V.S.A. § 5286</p> <ul style="list-style-type: none"> • As long as it notifies the attending physician in writing of its policy, a health care facility may prohibit a physician from writing a <i>prescription for a dose of medication intended to be lethal</i> for a patient who: <ul style="list-style-type: none"> ○ is a resident of the facility, and ○ intends to use the medication on the facility’s premises • A physician who violates the

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	facility's policy can be subject to sanctions	facility's policy can be subject to sanctions
Liabilities and penalties	<p>18 V.S.A. § 5296</p> <ul style="list-style-type: none"> • Except as otherwise specified, nothing in the chapter: <ul style="list-style-type: none"> ○ Limits liability for civil damages resulting anyone's from negligent conduct or intentional misconduct ○ Limits criminal prosecution • Health care providers are subject to review and disciplinary action by appropriate licensing entity for failing to act in accordance with the chapter if failure is not in good faith 	[No similar provision]
Form of written request	<p>18 V.S.A. § 5297</p> <p>Written requests for medication must be in substantially the same form as the language included in the chapter</p>	[No similar provision]
Statutory construction	<p>18 V.S.A. § 5298</p> <ul style="list-style-type: none"> • Nothing in the chapter authorizes a physician or anyone else to end a patient's life by lethal injection, mercy killing, or active euthanasia. • Action taken under the Act does not constitute suicide, assisted suicide, mercy killing, or homicide under the law • The section should not be construed to conflict with Affordable Care Act provision entitled "Prohibition on Discrimination on Assisted Suicide" 	<p>18 V.S.A. § 5289</p> <ul style="list-style-type: none"> • Nothing in the chapter authorizes a physician or anyone else to end a patient's life by lethal injection, mercy killing, or active euthanasia. • Action taken under the Act does not constitute suicide, assisted suicide, mercy killing, or homicide under the law • The section should not be construed to conflict with Affordable Care Act provision entitled "Prohibition on Discrimination on Assisted Suicide"
No effect on palliative sedation	<p>18 V.S.A. § 5299</p> <p>Nothing in the chapter limits or otherwise affects the provision, administration, or receipt of palliative sedation</p>	<p>18 V.S.A. § 5288</p> <p>Nothing in the chapter limits or otherwise affects the provision, administration, or receipt of palliative sedation</p>

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False witnessing	<p>Sec. 2 - False witnessing of a request for medication under the Act</p> <ul style="list-style-type: none"> • Creates a new crime for false witnessing of a request for medication • A person who knowingly violates the witnessing requirements will go to prison for up to 10 years, fined up to \$2,000, or both. 	[No similar provision]
Right to information	[No similar provision]	<p>18 V.S.A. § 5282</p> <p>Patient's rights to information under Bill of Rights for Palliative Care and Pain Management and to receive answers to specific questions from physician exist regardless of purpose of inquiry or nature of information.</p> <ul style="list-style-type: none"> • Physician who discusses risks and benefits of using medication pursuant to this chapter will not be construed to be assisting in or contributing to patient's independent decision to self-administer lethal dose of medication. • Discussions cannot be used to establish civil or criminal liability or professional disciplinary action.
Protection of patient choice at end of life	[No similar provision]	<p>18 V.S.A. § 5289 (takes effect on July 1, 2016)</p> <p>A physician with a bona fide physician-patient relationship with a patient with a terminal condition is not considered to have engaged in unprofessional conduct if:</p> <ul style="list-style-type: none"> • physician determines patient is capable and does not have impaired judgment; • physician informs patient of all feasible end-of-life choices; • physician prescribes a dose of medication that may be lethal to the patient;

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		<ul style="list-style-type: none"> • physician advises patient of all foreseeable risks related to prescription; and • patient makes independent decision to self-administer a lethal dose of the medication
Immunity for physicians	[No similar provision]	18 V.S.A. § 5290 (takes effect on July 1, 2016) Physicians are immune from civil and criminal liability and professional disciplinary action for actions performed in good faith compliance with the chapter
Repeal	[No similar provision]	18 V.S.A. § 5283 (requirements for prescription and documentation; immunity) is repealed on July 1, 2016
Effective Dates	The act takes effect on September 1, 2013, except that § 5292 takes effect on passage and Health Dept must ensure emergency rules for the safe disposal of unused medications are in effect by September 1, 2013	The act takes effect on passage, except that 18 V.S.A. §§ 5289 (protection of patient choice at end of life) and 5290 (immunity for physicians) take effect on July 1, 2016