

Act 39 and S.74 As Passed by the Senate
Maintains Safeguards, Removes Unnecessary Burdens, March 2022

[Act 39](#), Vermont's *Patient Choice and Control at End of Life* law, adopted in 2013, gives adult Vermonters who are terminally ill and who are capable of making their own decisions the option to receive medical aid-in-dying (MAID) to be self-administered to bring about a peaceful death if and when the patient chooses. Participation in the law is voluntary for patients, providers and facilities. Vermont is among eleven states (including Washington D.C.) that have similar laws providing medical aid in dying, covering 22% of Americans. Based on more than eight years of experience in Vermont, legislation ([S.74](#)) has passed the Senate that makes minor adjustments to Act 39. S.74 maintains the strong safeguards in the law while removing unnecessary barriers and aligning Vermont's law with similar laws in other states.

→ Safeguard System

Fundamental to [Act 39](#) is a comprehensive set of requirements and a carefully defined process. These safeguards assure that medical aid-in-dying is available only to those who are near death, competent to decide, and who have made the voluntary decision to request this assistance. The [safeguard system](#) is composed of:

- A strict set of qualification requirements,
- A mandatory process and timeline, and
- Documentation filed with the Vermont Department of Health by the doctor.

→ Eight Years of Experience

Since its passage in 2013, Act 39 has worked well and delivered peace of mind to dying Vermonters and their loved ones. The Vermont Department of Health [reported](#) that, from May 31, 2013 through June 30, 2021, 116 people qualified to receive terminal medication. About two-thirds of them are known to have used the medication. Of those who qualified, 77% were diagnosed with cancer; 16% were due to neurodegenerative diseases, including ALS; and the remainder were due to other illnesses.

Neither the Vermont Department of Health nor the Vermont Attorney General's Office have substantiated any complaints of abuse related to Act 39. Qualified Vermonters in all parts of the state have worked with their doctors to receive end-of-life medication. Every local hospice organization in Vermont has demonstrated a commitment to patient-directed end of life care by supporting those patients who choose to use medical aid in dying.

→ [S.74](#) Minor Adjustments to the Law

1. Telemedicine: Act 39 currently requires that the patient's two oral requests be made "in the physical presence" of the doctor. S.74 as passed by the Senate would allow for the two oral requests to be made "by telemedicine, if the physician determines the use of telemedicine to be clinically appropriate." Consultations for aid-in-dying oral requests would otherwise follow Vermont law covering telemedicine. With this change, Vermont's aid-in-dying law will align with best medical practice, allowing telemedicine when appropriate. Vermont is the only state in which physical visits are required for aid in dying requests. In all other MAID states, aid-in-dying consultations can be by telemedicine when appropriate. In all other areas of medical practice, Vermont law allows the use of telemedicine based on medical judgement and

Act 39 and S.74 As Passed by the Senate
Maintains Safeguards, Removes Unnecessary Burdens, March 2022

standards of appropriate practice. ([18 VSA 9361\(b\)](#)). S.74 as passed by the Senate would also ensure and clarify that the patient has had a physical exam by a physician prior to being found eligible for medical aid-in-dying.

- **Why It's Needed:** This amendment would provide great relief to dying patients, many of whom are in pain or have difficulty moving. It would also provide better access to physicians in areas of the state where there are few available.

2. Immunity: Act 39 explicitly provides immunity only for the physician involved in the aid-in-dying process. S.74 as passed by the Senate would clarify that any physician, nurse, pharmacist, or other person licensed, certified, or otherwise authorized by law to deliver health care services in acting in accordance with the law would be protected from claims of liability.

- **Why It's Needed:** The Attorney General's Office has [opined](#) that immunity for all providers involved in Act 39, and specifically pharmacists, is implicit in the law. However, some pharmacists in Vermont are not satisfied with implicit immunity and have required doctors to sign onerous indemnification agreements prior to filling prescriptions for their patients. This reduces the number of physicians who are willing to prescribe and creates pockets around the state where patients have trouble finding a doctor. All other states with laws covering MAID provide immunity for all persons who comply in good faith with a MAID law.

3. Timeline: Act 39 requires patients to go through a series of steps to get a prescription. S.74 as passed by the Senate keeps the mandated 15-day waiting period between two oral requests but removes an unnecessary and burdensome additional 48-hour delay after the last step in the process, before a prescription can be written.

- **Why It's Needed:** In practice, the request timeline takes one to two months. Patients often wait to make their requests in order to live as long as possible and then, in the midst of pain and limited energy, find themselves in an extended process. In some cases, the additional 48 hours has meant that the patient missed or feared missing the time when they had the ability to self-administer the medication. Vermont's Act 39 timeline is one of the longest among the 10 jurisdictions that have MAID laws.

→ **Summary:** Experience to date proves that Act 39 works well and provides comfort and choice to people suffering with terminal illness. The safeguards in the law effectively promote sound decisions and prevent abuse and would remain strong under S.74 as passed by the Senate. Experience tells us that some parts of the process required in Act 39 cause unnecessary delay and added suffering for many qualifying patients. S.74 will reduce this suffering.

For more information, please visit Patient Choice Vermont: <https://www.patientchoices.org>

Or contact Jessica Oski, oski@necrasongroup.com, 802-734-1508 or

Adam Necrason, adam@necrasongroup.com