Amendment to HB 1659-FN

1 New Chapter; Death With Dignity Act. Amend RSA by inserting after chapter 137-L the following new chapter:

CHAPTER 137-M

NEW HAMPSHIRE DEATH WITH DIGNITY ACT

137-M:1 Name of Act. This chapter may be known as “the New Hampshire Death With Dignity Act.”

137-M:2 Definitions. In this chapter:

I. “Adult” means a person who is 18 years of age or older.

II. “Attending physician” means the physician who has primary responsibility for the care of a patient and the treatment of that patient’s terminal disease.

III. “Competent” or “capable” means that, in the opinion of a court or in the opinion of the patient’s attending state-licensed physician or consulting physician, state-licensed psychiatrist, psychologist, state-licensed clinical social worker, or state-licensed clinical professional counselor a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient’s manner of communicating if those persons are available.

IV. “Consulting physician” means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a patient’s disease.

V. “Counseling” means one or more consultations between a state-licensed psychiatrist, state-licensed psychologist, state-licensed clinical social worker, or state-licensed clinical professional counselor and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

VI. “Division” means the division of public health services, department of health and human services.

VII. “Health care provider” means a person licensed, certified or otherwise authorized or permitted by law to administer health care services or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility under RSA 151.

VIII. “Informed decision” means a decision by a qualified patient to request and obtain a prescription for medication that the qualified patient may self-administer to end the patient’s life in a humane and dignified manner that is based on an appreciation of the relevant facts and that is made after being fully informed by the attending physician of:
(a) The qualified patient’s medical diagnosis;
(b) The qualified patient’s 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 to taking the medication to be prescribed, including palliative care and comfort care, hospice care, pain control and disease-directed treatment options.

IX. “Medically confirmed” means the medical opinion of an attending physician has been confirmed by a consulting physician who has examined the patient and the patient’s relevant medical records.

X. “Notice” means a separate statement in writing advising of the prohibiting health care provider’s policy with respect to participating in activities under this chapter.

XI. “Participating, or entering into an agreement to participate in activities under this chapter” means doing or entering into an agreement to do any one or more of the following:
(a) Performing the duties of an attending physician as specified in this chapter.
(b) Performing the duties of a consulting physician as specified in this chapter.
(c) Performing the duties of a state-licensed psychiatrist, state-licensed psychologist, state-licensed clinical social worker or state-licensed clinical professional counselor, in the circumstances that a referral to one is made.
(d) Delivering the prescription for, dispensing or delivering the dispensed medication pursuant to this chapter.
(e) Being present when the qualified patient takes the medication prescribed pursuant to this chapter.

(f) “Participating, or entering into an agreement to participate, in activities under this chapter does not include doing, or entering into an agreement to do, any of the following: diagnosing whether a patient has a terminal disease, informing the patient of the medical prognosis or determining whether a patient has the capacity to make decisions; providing information to a patient about this chapter; or providing a patient, upon the patient’s request, with a referral to another health care provider for the purposes of participating in the activities authorized under this chapter.

XII. “Patient” means an adult who is under the care of a physician.

XIII. “Physician” means a doctor of medicine or osteopathy licensed to practice medicine in this state.

XIV. “Qualified patient” means a competent adult who is a resident of the state of New Hampshire and who has satisfied the requirements of this chapter to obtain a prescription for medication that the qualified patient may self-administer to end the qualified patient’s life in a humane and dignified manner.
XV. “Self-administer” means, for a qualified patient, to voluntarily ingest medication to end
the qualified patient's life in a humane and dignified manner.

XVI. “Terminal disease” means an incurable and irreversible disease that has been
medically confirmed and will, within reasonable medical judgment, produce death within 6 months.

137-M:3 Right to Information. A patient has a right to information regarding all treatment
options reasonably available for the care of the patient, including, but not limited to, information in
response to specific questions about the foreseeable risks and benefits of medication, without a
physician's withholding requested information regardless of the purpose of the questions or the
nature of the information.

137-M:4 Written Request for Medication.

I. An adult who is competent, is a resident of the state of New Hampshire, has been
determined by an attending physician and a consulting physician to be suffering from a terminal
disease and has voluntarily expressed the wish to die may make a written request for medication
that the adult may self-administer in accordance with this chapter.

II. No person shall be a qualified patient under this chapter solely because of age or
disability.

III. No person or agency, including a legal guardian or agent under a durable health care
power of attorney, shall be authorized to make a request for medication pursuant to this chapter on
behalf of a patient who is not capable.

137-M:5 Form of Written Request.

I. A valid request for medication under this chapter shall be substantially in the form
described in subparagraph II(a) and shall be signed and dated by the patient and witnessed by at
least 2 individuals who, in the presence of the patient, attest that to the best of their knowledge and
belief the patient is competent, is acting voluntarily and is not being coerced to sign the request.

II(a) REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED
MANNER. I __________________, am an adult of sound mind. I am suffering from _________, which
my attending physician has determined is a terminal disease and which has been medically
confirmed by a consulting physician. I have been fully informed of my diagnosis, prognosis, the
nature of medication to be prescribed, and potential associated risks, the expected result, and the
feasible alternatives, including comfort care, hospice care, pain control, and disease-directed
treatment options.

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

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

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

____ I have no family to inform of my decision.
I understand the full import of this request and I expect to die when I take the medication prescribed. I further understand that, although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

SIGNED ________________________  
DATED ________________________

A patient who declines or is unable to notify the patient’s family or next of kin may not have the patient’s request for medication denied for that reason.

(b) DECLARATION OF WITNESSES

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request.

____ Is personally known to us or has provided proof of identity.  
____ Signed this request in our presence on the date of the person’s signature.  
____ Appears to be of sound mind and not under duress, fraud, or undue influence.  
____ Is not a patient for whom either of us is attending physician.

Initials of Witness 1 ______  
Signature of Witness 1_________________________  Date __________

Initials of Witness 2______  
Signature of Witness 2_________________________  Date __________

(c) LANGUAGE OF WRITTEN REQUEST

The language of a written request for medication under this chapter must be the language in which any conversations or consultations, or interpreted conversations or consultations, between a patient and the patient’s attending physician or consulting physician are held. The language of a written request for medication under this law may be English when the conversations or consultations, or interpreted conversations or consultations, between a patient and the patient’s attending physician or consulting physician were conducted in English. The language of a written request for medication under this law may be in a language other than English if the services of an interpreter are employed. If communication between the patient and the treating physician is conducted through an interpreter, the interpreter must complete and sign the following Declaration:

(d) DECLARATION OF INTERPRETER

Under penalty of perjury, I declare that I,________________________, am fluent in English and in (language of patient) _____________________.

On (date) ______________ at approximately (time) ________, I read the “Request for Medication to End My Life in a Humane and Dignified manner” to (name of patient)_______________________.

Mr./Ms (name of patient)_______________ affirmed to me that he/she understands the content of this form, that he/she desires to sign this form under his/her own power and volition, and that he/she requested to sign the form after consultations with an attending physician and a consulting physician. Under penalty of perjury, I declare that the contents of this form, to the best of my
knowledge, are true and correct.

Executed at __________________(name of city, county, and state) on __________(date)

Interpreter’s signature__________________________________________

Interpreter’s printed name ________________________________________

Interpreter’s address _____________________________________________

III. At least one of the 2 or more witnesses required under this section, and any interpreter required under subparagraph II(d) must be a person who is not:

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

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

(c) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident;

(d) The patient’s attending physician at the time the written request is signed may not be a witness.

(e) If the patient is a patient in a long-term care facility at the time the patient makes the written request, one of the witnesses must be an individual designated by the facility, who has the qualifications specified by the department by rule.

137-M:6 Attending Physician Responsibilities. The attending physician shall:

I. Make the initial determination of whether a patient has a terminal disease, is competent and has made the written request under RSA 137-M:5 voluntarily.

II. Request that the patient demonstrate state residency as required by RSA 137-M:14.

III. To ensure that the patient is making an informed decision, inform the patient of:

(a) The patient’s medical diagnosis;

(b) The patient’s 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 to taking the medication to be prescribed, including palliative care and comfort care, hospice care, pain control and disease-directed treatment options.

IV. Refer the patient to a consulting physician for medical confirmation of the diagnosis and for a determination that the patient is competent and acting voluntarily.

V. Confirm that the patient’s request does not arise from coercion or undue influence by another individual by discussing with the patient, outside the presence of any other individual, except for an interpreter (if needed), whether the patient is feeling coerced or unduly influenced.

VI. Refer the patient for counseling, if appropriate, as described in RSA 137-M:8.

VII. Recommend that the patient notify the patient’s next of kin.

VIII. Counsel the patient about the importance of having another person present when the patient takes the medication prescribed under this chapter, and counsel the patient about not taking
the medication prescribed under this chapter in a public place.

IX. Inform the patient that the patient has an opportunity to rescind the request at any time and in any manner and offer the patient an opportunity to rescind the request at the end of the 15-day waiting period pursuant to RSA 137-M:12.

X. Verify, immediately before writing the prescription for medication under this chapter, that the patient is making an informed decision.

XI. Fulfill the medical record documentation requirements in RSA 137-M:13.

XII. Ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medication to enable a qualified patient to end the qualified patient’s life in a humane and dignified manner.

XIII. Dispense medications directly, including ancillary medications intended to minimize the patient’s discomfort, if the attending physician is authorized under state law or rule to dispense medications and has a current drug enforcement administration certificate, or with the patient’s written consent:

(a) Contact a pharmacist and inform the pharmacist of the prescription; and

(b) Deliver the written prescription personally, by mail, or electronically to the pharmacist, who may dispense medications in person to the patient, the attending physician, or an expressly identified agent of the patient.

137-M:7 Consulting Physician Confirmation. Before a patient is determined to be a qualified patient under this chapter, a consulting physician shall examine the patient and the patient’s relevant medical records and confirm, in writing, the attending physician’s diagnosis that the patient is suffering from a terminal disease and verify that the patient is competent, is acting voluntarily, and has made an informed decision.

137-M:8 Counseling Referral. If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, the physician shall refer the patient for counseling. Medication to end the patient’s life in a humane and dignified manner shall not be prescribed until the person performing the counseling determined that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

137-M:9 Informed Decision. A qualified patient shall not receive a prescription for medication under the chapter unless the qualified patient has made and informed decision. Immediately before writing a prescription for medication, the attending physician shall verify that the qualified patient is making an informed decision.

137-M:10 Written and Oral Requests. To receive a prescription for medication that the qualified patient may self-administer under this chapter, a qualified patient shall make an oral request and a written request, and reiterate the oral request to the qualified patient’s attending physician at least 15 days after making the initial oral request. At the time the qualified patient makes the qualified
patient’s second oral request, the attending physician shall offer the qualified patient an opportunity
to rescind the request.

137-M:11 Right to Rescind Request. A patient may rescind the patient’s request at any time
and in any manner without regard to the patient’s mental state. A prescription for medication shall
not be written under this chapter without the attending physician’s offering the qualified patient an
opportunity to rescind the request.

137-M:12 Waiting Periods. At least 15 days must elapse between the patient’s initial oral
request and the date the patient signs the written request under RSA 137-M:10. At least 48 hours
must elapse between the date the patient signs the written request and the writing of a prescription
under this chapter.

137-M:13 Medical Record Documentation Requirements. The following shall be documented or
filed in a patient’s medical record:

I. All oral requests by the patient for medication to end that patient’s life in a humane and
dignified manner.

II. All written requests by a patient for medication to end that patient’s life in a humane and
dignified manner.

III. The attending physician’s diagnosis and prognosis and the attending physician’s
determination that the patient is competent, is acting voluntarily, and has made an informed
decision.

IV. The consulting physician’s diagnosis and prognosis and the consulting physician’s
verification that the patient is competent, is acting voluntarily, and has made an informed decision.

V. A report of the outcome and determination made during counseling, if counseling is
provided under RSA 137-M:8.

VI. The attending physician’s offer to the patient to rescind the patient’s request at the time
of the patient’s second oral request under RSA 137-M:10.

VII. A note by the attending physician indicating that all requirements under this chapter
have been met, and indicating the steps taken to carry out the patient’s request, including a notation
of the medication prescribed.

137-M:14 Residency Requirement. For purposes of this chapter, only requests made by
residents of the state of New Hampshire state may be granted. The residency of a person is that
place where the person has established a fixed and principal home to which the person, whenever
temporarily absent, intends to return. The following factors may be offered in determining a
person’s residence under this chapter and need not all be present in order to determine a person’s
residence:

I. Possession of a valid driver’s license issued by the New Hampshire department of motor
vehicles;

II. Registration to vote in this state;
III. Evidence that the person owns or leases property in this state;
IV. The location of any dwelling currently occupied by the person;
V. The place where any motor vehicle owned by the person is registered;
VI. The residence address, not a post office box, shown on a current Federal income tax return;
VII. The residence address, not a post office box, at which the person's mail is received;
VIII. The residence address, not a post office box, shown on any current hunting or fishing license held by the person;
IX. The residence address, not a post office box, shown on any driver's license held by the person;
X. The receipt of any public benefit conditioned upon residency, defined substantially under this section; or
XI. Any other objective facts indicating a person’s place of residence.

137-M:15 Disposal of Unused Medications. A person who has custody of, or control over any unused medications prescribed pursuant to this chapter after the death of the qualified patient shall personally deliver the unused medications to the nearest facility qualified to dispose of controlled substances or, if such delivery is impracticable, personally dispose of the unused medications by any lawful means, in accordance with guidelines adopted by the department of health and human services.

137-M:16 Reporting of Information; Rulemaking; Reports. The commissioner of the department of health and human services shall:
I. Annually review all records maintained under this chapter;
II. Require any health care provider upon writing a prescription dispensing medication under this chapter to file a copy of the prescription or dispensing record, and other documentation required under this chapter associated with the prescription or dispensing the medication, with the department:
   (a) Documentation required to be filed under this paragraph shall be mailed or otherwise transmitted as allowed by rules adopted pursuant to RSA 541-A, no later than 30 days after the writing of the prescription or the dispensing of medication under this chapter, except that all documents required to be filed with the department by the prescribing physician after the death of the qualified patient shall be submitted no later than 30 calendar days after the date of the death of the qualified patient;
   (b) If a person required under this chapter to report information to the department provides an inadequate or incomplete report, the department shall contact the person to request an adequate or complete report;
III. Within 6 months of the effective date of this chapter, adopt rules, pursuant to RSA 541-A, to facilitate the collection of information regarding compliance with this chapter. Except as
otherwise provided by law, the information collected shall be confidential, is not a public record, and
shall not be made available for inspection by the public; and

IV. Generate and make available to the public an annual statistical report to the house and
senate committees having jurisdiction over health matters annually by March 1st.
137-M:17 Effect on Construction of Wills, Contracts, and Other Agreements.

I. Any provision in a contract, will, or other agreement, whether written or oral, to the
extent the provision would affect whether a person may make or rescind a request for medication to
end the person’s life in a humane and dignified manner, is not valid. Any obligation owing under
any currently existing contract shall not be conditioned upon or affected by the making or rescinding
of a request by a person for medication to end the person’s life in a humane and dignified manner.

II. The sale, procurement, or issuance of any life, health, or accident insurance or annuity
policy or the rate charged for any life, health, or accident insurance or annuity policy shall not be
conditioned upon or affected by the making or rescinding of a request by a person for medication that
the person may self-administer to end the person’s life in a humane and dignified manner. A
qualified patient’s act of ingesting medication to end the qualified patient’s life in a humane and
dignified manner does not have an effect upon a life, health or accident insurance or annuity policy,
issued under the provisions of applicable state statutes, and the rate charged by the insurer for the
policy shall not be conditioned upon or affected by the participation of the health care provider in the
provision of medication to a qualified patient in accordance with this chapter.

III. A qualified patient whose life is insured under a life insurance policy issued under the
provisions of RSA 564-E:210 and the beneficiaries of the policy shall not be denied benefits on the
basis of self-administration of medication by the qualified patient in accordance with this chapter.
The sale, procurement or issuance of any medical professional liability insurance policy shall not be
conditioned upon or affected by the participation by the health care provider in the provision of
medication to a qualified patient in accordance with this chapter.

IV. This chapter does not authorize a physician or any other person to end a patient’s life by
lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter
do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide under the law.
State reports shall not refer to acts committed under this chapter as “suicide” or “assisted suicide.”
Consistent with the provisions of this chapter, state reports shall refer to acts committed under this
chapter as obtaining and self-administering life-ending medication. A patient’s death certificate,
issued by the New Hampshire department of state, division of bureau of vital records pursuant to
RSA 5-C:1 shall list the underlying terminal disease as the cause of death. Nothing contained in this
chapter shall be interpreted to lower the applicable standard of care for the attending physician, the
consulting physician, a psychiatrist or a psychologist or other health care provider who is providing
services under this chapter.

137-M:18 Basis for Prohibiting Persons or Entities From Participation; Penalties; Permissible
Actions. The following provisions govern the basis for prohibiting persons or entities from participating in activities under this chapter, notification, penalties, and permissible actions.

I. Subject to compliance with paragraph II and notwithstanding any other law, a health care provider may prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this chapter while on premises owned or under the management or direct control of that prohibiting health care provider or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

II. A health care provider that elects to prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this chapter, shall first give notice of the policy prohibiting participation under this chapter to those employees, independent contractors, or other persons or entities, including other health care providers. A health care provider that fails to provide notice to those employees, independent contractors, or other persons or entities, including other health care providers, in compliance with this paragraph may not enforce such a policy against those employees, independent contractors, or other persons or entities, including other health care providers.

III. Subject to compliance with paragraph IV, the prohibiting health care provider may take action, including, but not limited to, the following, as applicable against an employee, independent contractor, or other person or entity, including another health care provider, that violates this policy:

(a) Loss of privileges, loss of membership, or other action authorized by the bylaws or rules and regulations of the medical staff;

(b) Suspension, loss of employment or other action authorized by the policies or practices of the prohibiting health care provider;

(c) Termination of any lease or other contract between the prohibiting health care provider and the employee, independent contractor, or other person or entity, including another health care provider that violates the policy; or

(d) Imposition of any other non-monetary remedy provided for in any lease or contract between the prohibiting health care provider and the employee, independent contractor, or other person or entity, including another health care provider, in violation of the policy.

IV. Nothing in this section shall be construed to prevent, or to allow a prohibiting health care provider to prohibit an employee, independent contractor, or other person or entity, including another health care provider from any of the following:

(a) Participating, or entering into an agreement to participate, in activities under this chapter while on premises that are not owned or under the management or direct control of the prohibiting health care provider or while acting outside the course and scope of the participant’s duties as an employee of, or independent contractor for the prohibiting health care provider.

(b) Participating, or entering into an agreement to participate, in activities under this
chapter as an attending physician, or consulting physician while on premises not owned or under
management or direct control of the prohibiting health care provider.

(c) Subject to compliance with subparagraph (b), the prohibiting health care provider
may take action, including, but not limited to, the following, as applicable against an employee,
independent contractor, or other person or entity, including another health care provider, that
violates this policy: (1) Loss of privileges, loss of membership, or other action authorized by the
bylaws or rules and regulations of the medical staff; (2) Suspension, loss of employment or other
action authorized by the policies and practices of the prohibiting health care provider; (3)
Termination of any lease or other contract between the prohibiting health care provider and the
employee, independent contractor or other person or entity, including another health care provider,
that violates the policy; or (4) Imposition of any other non-monetary remedy provided for in any lease
or contract between the prohibiting health care provider and the employee, independent contractor,
or other person or entity, including another health care provider, in violation of the policy.

(d) Nothing in this paragraph shall be construed to prevent, or to allow a prohibiting
health care provider to prohibit an employee, independent contractor, or other person or entity,
including another health care provider from any of the following: (1) Participating, or entering into
an agreement to participate, in activities under this Act while on premises that are not owned by, or
under the direct control of, the prohibiting health care provider, or while acting outside the course
and scope of the participant’s duties as an employee of, or an independent contractor for, the
prohibiting health care provider; or (2) Participating, or entering into an agreement to participate, in
activities under this chapter as an attending physician or consulting physician while on premises
that are not owned or under the management of or direct control of the prohibiting health care
provider.

(e) In taking actions pursuant to subparagraph (c), a health care provider shall comply
with all procedures required by law, its own policies or procedures and any contract with the
employee, independent contractor, or other person or entity, including another health care provider,
in violation of the policy, as applicable.

(f) Any action taken by a prohibiting health care provider pursuant to this paragraph
shall not be reportable to the appropriate licensing board under Title XXX, including, but not limited
to, the office of professional licensure and certification, board of medicine, board of nursing, and/or
pharmacy board. The fact that a health care provider participates in activities under this chapter
shall not be the sole basis for a complaint or report by another health care provider to the
appropriate licensing board.

137-M:19 Compliance With Laws, Policies and Procedures. In taking actions pursuant to this
chapter, a health care provider shall comply with all procedures required by law, its own policies and
procedures and any contract with the employee, independent contractor, or other person or entity,
including another health care provider, in violation of the policy, as applicable.
137-M:20 Reportability. Any action taken by a prohibiting health care provider pursuant to this subsection is not reportable to the appropriate licensing board under Title XXX, including, but not limited to, the office of professional licensure and certification, board of medicine, board of nursing, and/or pharmacy board. The fact that a health care provider participates in activities under this chapter shall not be the sole basis for a complaint report by another health care provider to the appropriate licensing board.

137-M:21 Alteration, Forgery, Coercion, Undue Influence. Willful alteration or forgery; coercion or undue influence; penalties; civil damages; other penalties not precluded. The following provisions govern criminal and other penalties for certain violations of this chapter:

I. A person who, without authorization of the patient, willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient’s death commits a class A felony.

II. A person who coerces or exerts undue influence on a patient to request medication to end the patient’s life or to destroy a rescission of a request commits a class A felony.

III. This chapter shall not limit liability for civil damages resulting from negligent conduct or intentional misconduct by a person.

IV. The penalties under this chapter do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this chapter.

137-M:22 Claims For Costs Incurred; Claims by Governmental Entity for Costs Incurred. Any governmental entity that incurs costs resulting from a person ending the person’s life under this chapter in a public place has a claim against the estate of the person to recover the costs and reasonable attorney’s fees related to enforcing the claim.

2 Effective Date. This act shall take effect 60 days after its passage.
This bill establishes the New Hampshire death with dignity act.