To: ALL HEALTH CARE FACILITIES

ALL HEALTH CARE PROFESSIONALS LICENSED TO PRACTICE A HEALTH CARE PROFESSION PURSUANT TO TITLE 45 OF THE NEW JERSEY REVISED STATUTES

Date: July 30, 2019

SUBJECT: Guidance Memorandum Regarding the Medical Aid in Dying for the Terminally Ill Act, P.L. 2019, c. 59

On April 12, 2019, Governor Murphy signed into law the Medical Aid in Dying for the Terminally Ill Act ("Act"), which supplements Titles 45 and 26 of the Revised Statutes, and amends P.L. 1991, c. 270 and N.J.S. 2C:11-6. See P.L.2019, Chapter 59. The Act takes effect August 1, 2019.

In summary, the Act allows an adult New Jersey resident, who has the capacity to make health care decisions and who has been determined by that individual's attending and consulting physicians to be terminally ill, to obtain medication that the patient may self-administer to end the patient's life. "Terminally ill" is defined in the Act to mean the patient is in the terminal stage of an irreversibly fatal illness, disease, or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six months or less. The Act defines "health care professional" as a person licensed to practice a health care profession pursuant to Title 45 of the Revised Statues. The Act defines "health care provider" as a Health care professional or health care facility. A "health care facility" is defined as a health care facility pursuant to N.J.S.A. 26:2H-1 et seq.[1]

I. Responsibilities under the Act

The Act requires the New Jersey Department of Health (DOH) to adopt such rules or take anticipatory administrative action as necessary to implement the following provisions. This guidance document is intended to advise health care facilities and professionals as to their responsibilities under the Act, pending formal rulemaking. In relevant part, the Act states:

A. **Health Care Facility Policies and Procedures:** The healthcare facility's participation in the medical aid in dying process is voluntary. Should a facility decide

[1] N.J.S.A. 26:2H-2 defines "health care facility" as:

> facility or institution, whether public or private, that is engaged principally in providing services for health maintenance organizations, diagnosis, or treatment of human disease, pain, injury, deformity, or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, residential health care facility, dementia care home, and bioanalytical laboratory (except as specifically excluded hereunder), or central services facility serving one or more such institutions but excluding institutions that provide healing solely by prayer and excluding such bioanalytical laboratories as are independently owned and operated, and are not owned, operated, managed, or controlled, in whole or in part, directly or indirectly by any one or more health care facilities, and the predominant source of business of which is not by contract with health care facilities within the State of New Jersey and which solicit or accept specimens and operate predominantly in interstate commerce.

to participate in the medical aid in dying process, the facility's existing policies and procedures govern the actions of healthcare professionals while on premises owned by or under direct control of the facility.

B. **Reporting**: A health care professional shall report information to the DOH on forms and in a manner prescribed as follows:

(a) As soon as possible and no later than 30 days after dispensing medication pursuant to the Act, the physician or pharmacist who dispensed the medication shall file a copy of the dispensing record with the Office of the Chief State Medical Examiner (OCSME) at DOH and shall facilitate the collection of the information DOH requires; and

(b) As soon as possible and no later than 30 days after the date of the qualified terminally ill patient's death, the attending physician shall transmit to the OCSME at DOH the required documentation of the patient's death.

C. **Coordination with Prescription Monitoring Program**: To the maximum extent practicable, the DOH shall coordinate the process for reporting information pursuant to the Act with the reporting of prescription monitoring information by a pharmacy permit holder.

II. Guidance

A. **Health Care Facility Policies and Procedures**: All health care facilities shall prepare and implement policies and procedures that govern a health care professional's conduct pursuant to the Act or, alternatively (given that a facility's compliance with the Act is voluntary), that ensure appropriate patient notification, referral and transfer if the health care facility opts not to offer patients the option delineated by the Act.

1) At a minimum, a health care facility that opts to participate shall develop and implement policies and procedures ensuring that the patient's medical record includes documentation that all the requirements of the Act have been followed, including:

a. A consulting physician has confirmed the attending physician's diagnosis that the patient is a qualified terminally ill patient;
b. The consulting physician has verified the attending physician's determination that the patient is capable;
c. If the attending physician has not determined that the patient is capable, inclusion in the medical record of any report made by a mental healthcare professional as to whether the patient is capable. If the consulting physician has not determined that the patient is capable, inclusion in the medical record of any report made by a mental healthcare professional as to whether the patient is capable as well as the consulting physician's notice to the attending physician of the referral to the mental health professional. The Act defines mental healthcare professional as: a psychiatrist, psychologist, or clinical social worker licensed pursuant to Title 45 of the Revised Statutes;
d. The attending physician has recommended that the patient's next of kin be notified of the patient's request for medication;

e. The attending physician's recommendation regarding consultation regarding concurrent or additional treatment opportunities, palliative care, comfort care, hospice care, and pain control options; the referral to a healthcare professional who could discuss these options and an indication as to whether the patient participated in the consultation;
f. An indication noting if the patient is currently receiving palliative care, comfort care, hospice care or pain control treatments;
g. That the time frame for the required oral and written requests by the patient to their attending physician for the medication has been followed;
h. That the written request for medication is signed and dated by the patient, and is properly witnessed by two witnesses. One of the two witnesses must be someone who is not: (i) related to the patient; (ii) entitled to a portion of the patient's estate, or (iii) an owner, operator or employee of a health care facility, other than a long-term care facility, where the patient is being treated or is a resident;
i. That the patient has been informed of the patient's opportunity to rescind the request at any time and in any manner, and offered an opportunity to rescind the request at the time the patient makes a second oral request for medication;
j. That the patient has been advised about the importance of having another person present if and when the patient chooses to self-administer medication prescribed pursuant to the patient's request and of not taking the medication in a public place; and
k. Confirmation that the patient is a New Jersey resident.

2) The policies and procedures shall note that, under the Act, designation as a guardian, conservator, health care representative or patient representative does not authorize that person to take any action on behalf of the patient except for communicating the patient's health care decisions to a health care provider if the patient so requests.

B. **Reporting**: Health care professionals shall comply with the reporting requirements set forth above as follows:

1) As soon as possible and no later than 30 days after dispensing medication pursuant to the Act, the physician or pharmacist who dispensed the medication shall file a copy of the Medical Aid in Dying Act Dispensing Record, available on-line at http://nj.gov/health/maid.

2) As soon as possible and no later than 30 days after the date of the qualified terminally ill patient's death, the attending physician shall transmit to the DOH the required documentation of the patient's death in the Medical Aid in Dying Act compliance and follow up forms as listed in B(4)c-f below, available on-line at http://nj.gov/health/maid.

3) The Medical Aid in Dying Act Dispensing Record and the compliance forms shall be filed with the Office of the Chief State Medical Examiner at DOH at:

120 South Stockton Street, 3rd floor
PO Box 360
Trenton, NJ 08625.

An electronic submission process is forthcoming. Any changes or additional submission processes will be posted to the DOH website.

4) On the Department of Health website will be forms and instructions to be used by health care professionals and facilities in order to comply with the Act's reporting and recordkeeping requirements, including:

a. Request for Medication to End My Life in a Humane and Dignified Manner
b. Medical Aid in Dying Act Medication Dispensing Record
c. Medical Aid in Dying Act Attending Physician Compliance Form
d. Medical Aid in Dying Act Consulting Physician Compliance Form
e. Medical Aid in Dying Act Mental Health Professional Compliance Form
f. Medical Aid in Dying Act Attending Physician Follow Up Form

C. **Coordination with Prescription Monitoring Program**: Where applicable, the attached forms address coordination with the Prescription Monitoring Program.

Please note:

- This guidance is effective August 1, 2019 and will remain in effect until either the Commissioner of Health disseminates new guidance or the Commissioner adopts rules effectuating the Act.

- The Act sets forth oversight by and/or involvement of various other state entities and boards, such as the New Jersey Board of Medical Examiners, the Division of Consumer Affairs, the New Jersey State Board of Pharmacy, the State Board of Psychological Examiners, and the State Board of Social Work Examiners. Stakeholders are encouraged to review any and all applicable guidance and rules promulgated by these entities.

- DOH strongly encourages health care providers and health care facilities to review the Act in its entirety, at https://www.njleg.state.nj.us/2018/Bills/PL19/59_.PDF

Questions/Comments:

- For inquiries regarding Health Care Facility Policies and Procedures: Office of Certificate of Need and Healthcare Facility Licensure, Michael J. Kennedy at (609) 292-5960 or at michael.kennedy@doh.nj.gov.

- For inquiries regarding Reporting: Office of the Chief State Medical Examiner at (609) 815-2063 or at MAID@doh.nj.gov.

- To report a death and initiate follow up on a patient under the Medical Aid in Dying Act, please call (973) 648-4500 (available 24/7).