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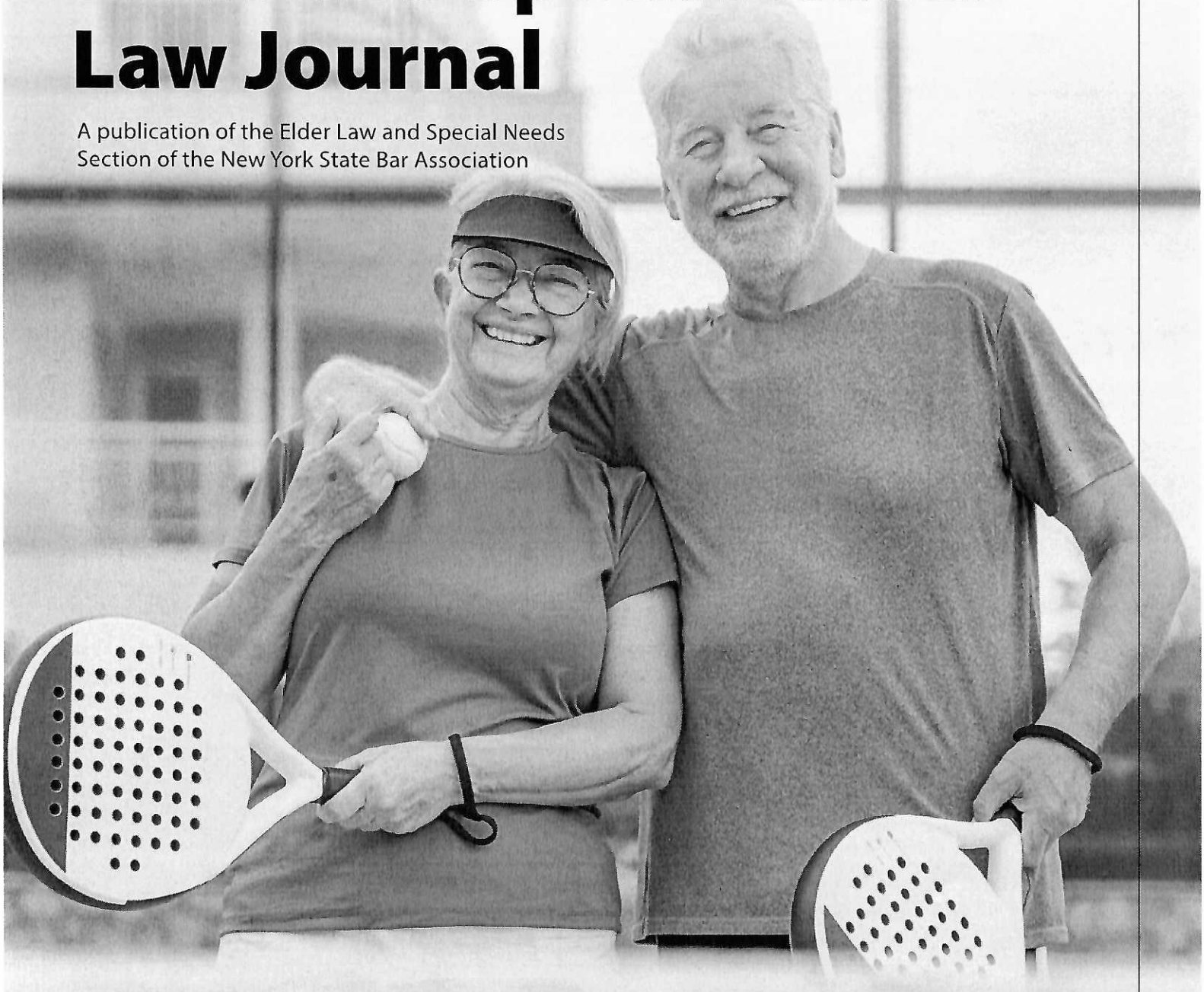

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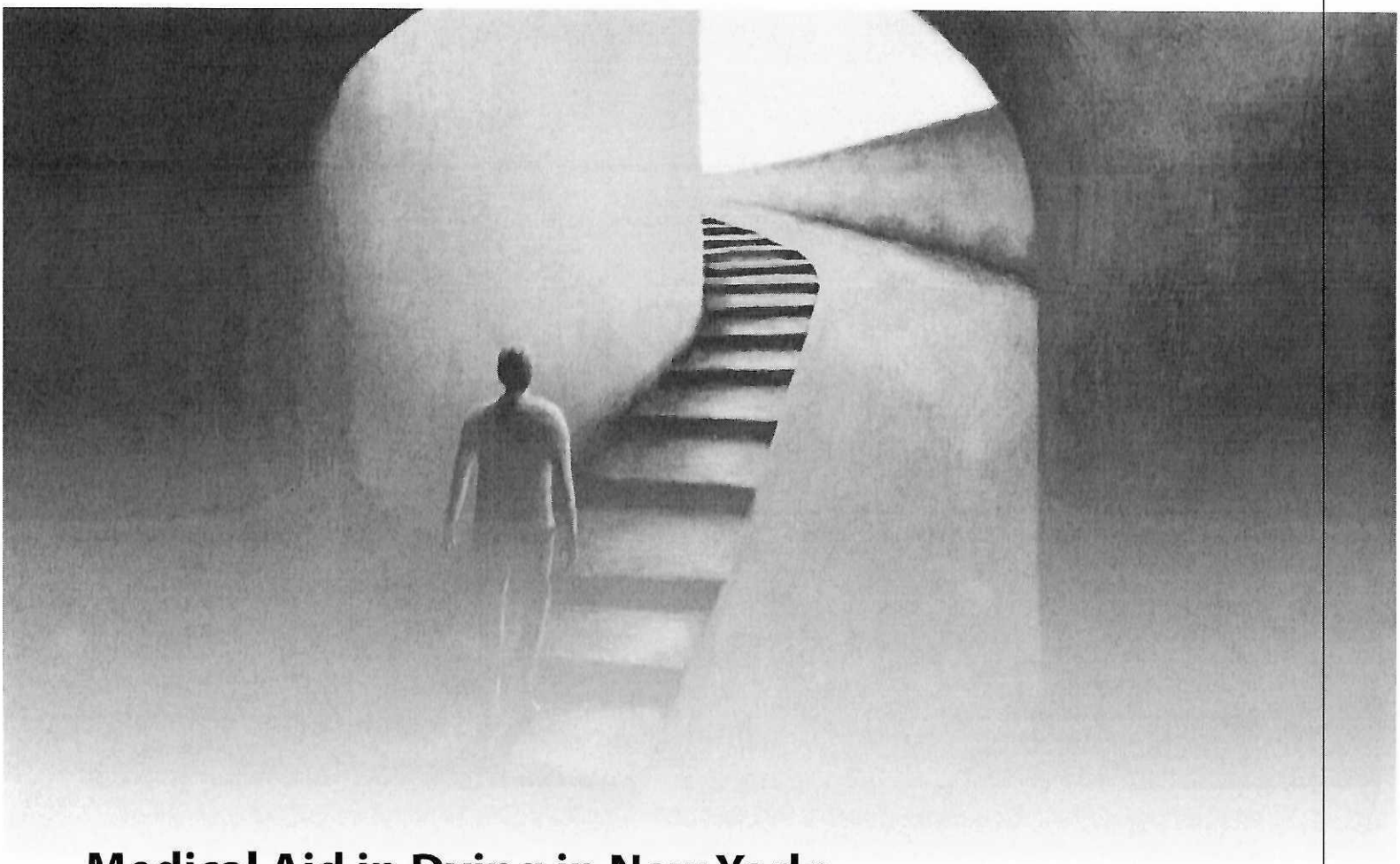


Medical Aid in Dying in New York: A New Right for Persons Near the End of Life

By Peter Strauss

New York has joined 13 other states and the District of Columbia in enacting a Medical Aid in Dying law. The statute, formally titled the New York Medical Aid in Dying Act, is codified as Article 28-F of the Public Health law (A136; S138) and will be referred to as "MAID." The legislation permits an individual who is at least 18 years old, has a terminal illness with a prognosis of six months or less to live, and possesses decision-making capacity to request and obtain a prescription for medication that may be self-administered to bring about a peaceful death when suffering becomes intolerable. The law is modeled after Oregon's Death With Dignity Act, which has been in effect for more than 25 years without a single substantiated case of abuse or coercion.

The bill was initially passed by the New York State Legislature in 2025. Governor Hochul required a few amendments and the Legislature agreed to most of them, as did most advocates of MAID (although some reluctantly). The governor held a press conference and, in moving remarks, she explained her decision to sign the new law once the Legislature passed the new version with her requested changes, which it did.

The governor said:

> Our state will always stand firm in safeguarding New Yorkers' freedoms and right to bodily autonomy, which includes the right for the terminally ill to peacefully and comfortably end their lives with dignity and compassion... This journey was deeply personal for me. Witnessing my mother's suffering from ALS was an excruciating experience, knowing there was nothing I could do to alleviate the pain of someone I loved. It took years of intimate discussions with our bill sponsors, health experts, advocates, and most importantly, families who have similar firsthand experiences. New Yorkers deserve the choice to endure less suffering, not by shortening their lives, but by shortening their deaths – I firmly believe we made the right decision.

The governor signed the law on February 6, 2026. It becomes effective on August 5, 2026. The New York State De-

partment of Health is charged with preparing implementing regulations.

Basic Eligibility Criteria[1]

To obtain a prescription for terminal medication from a physician a patient must:

- Be an adult, age 18 or older.
- Be a New York resident.
- Have a medically certified terminal illness that is incurable and irreversible and will likely cause death within six months.
- Be mentally capable of making an informed health care decision.
- Be free of undue influence.
- Be able to personally ingest the medication *without assistance*.

Critical Protective Provisions

- Two physicians (the primary physician and a consulting physician) must certify that the person is terminally ill with a prognosis of six months or less to live.
- The physicians must certify that the patient is making an informed healthcare decision and is not being coerced.
- Capacity must be established. A mandatory mental health evaluation must be conducted by a psychologist, neurologist or psychiatrist to determine that the person has the capacity to make an informed health care decision. The mental health provider must confirm in writing the dying person's capacity before a prescription can be written.
- The statute includes this definition of capacity rather than referring to some other definition in other laws:

  > "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of and alternatives to any proposed health care, including medical aid in dying, and to reach an informed decision.

- The initial evaluation of a patient by a physician must be in person, unless the attending physician believes an in-person visit would result in extraordinary hardship.
- The individual must make an oral request for the medication and a written request witnessed by two people, neither of whom may be a relative of or who might benefit from the estate of the individual. The statute contains a list of other persons who may not be witnesses (or an interpreter).
- The prescribing physician must inform the requesting individual about all of her or his end-of-life care options, including palliative care and hospice.
- There is a five-day waiting period after the prescription is written before it can be filled by a pharmacy, unless the attending physician believes that the patient will die within the five-day period.
- The terminally ill person can withdraw their request for aid-in-dying medication, not take the medication once they have it, or change their mind at any point in time (right to rescind) "without regard to the patient's decision-making capacity."
- As noted above, the individual must be able to self-ingest the medication. A health care professional or other person shall not administer the medication to the patient.
- "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal illness or condition.
- "Mental health professional" means a licensed physician, who is a diplomate or eligible to be certified by a national board of psychiatry, psychiatric nurse practitioner, or psychologist, licensed or certified under the education law acting within such mental health professional's scope of practice and who is qualified, by training and experience, certification, or board certification or eligibility, to make a determination under section 2899-I of this article.
- "Palliative care" means health care treatment, including inter-disciplinary end-of-life care, and consultation with patients and family members, to prevent or relieve pain and suffering and to enhance the patient's quality of life, including hospice care under article 40 of this chapter.

Other Provisions

- No physician, health provider, or pharmacist is required to participate in medical aid in dying. Prescribing providers who comply with all aspects of the law receive civil and criminal immunity.
- Anyone attempting to coerce a patient will face criminal prosecution.
- Unused medication must be disposed of as required by state and federal laws.
- Health insurance benefits are unaffected by the availability of medical aid in dying, and life insurance pay-

ments cannot be denied to the families of people who utilize the law.

- An oral request by the patient for medical aid in dying must be recorded by video or audio and permanently stored in the patient's medical record.
- The statute allows religiously oriented home hospice providers to opt out of offering medical aid in dying, while ensuring a patient receiving hospice care within their own home is not restricted from accessing medical aid in dying.
- The new law provides that a violation of the statute is professional misconduct under the Education Law.
- The commissioner of the New York Department of Health is required to issue a publicly available annual report about the usage of the law. Patient and physician identifying information must be kept confidential.
- The statute recommends that the physician discuss with the patient's family of the patient's decision to request and take terminal medication but states a patient "who declines or is unable to notify family shall not have such patient's request for medication denied for that reason."

The commissioner and the department's staff are currently working on the necessary regulations. Several of the advocacy groups, and undoubtedly organizations that opposed the legislation, will be providing input on the provisions of the regulations. Most interesting and critical is whether the commissioner's definition of capacity in the regulations will cause any controversy. That would certainly be a challenge.

Analysis

The MAID law will benefit a limited number of people. The eligibility requirements rule out persons who have dementia or who do not have decision-making capacity for any other reason or medical issues that make it impossible for them to personally ingest the medication. In effect, this requirement, depending on one's personal view, of MAID either *protects* or *discriminates against some persons with a disability*, including, of course, those who suffer from advanced dementia.

Some advocates of MAID have sought to include a provision that would permit some assistance in ingesting the medication when a medical condition prevents self-ingestion. No state has authorized such an exception, and it would be vigorously opposed by disability rights advocates and organizations who historically have opposed enactment of MAID laws.

It is difficult to anticipate the number of New Yorkers who will seek the benefit of MAID in New York. However, a look at the Oregon Death With Dignity Act, enacted on October 27, 1997, provides a window into what is likely to be utilization in New York. The Oregon Health Authority provides excellent annual reports about usage and issues.

Here is the authority's own statement about its law:

> The Oregon Death with Dignity Act allows an adult, who is an Oregon resident and is suffering from a terminal disease that will cause death within six months, to end his or her life through the use of medication. To do so, the person must express voluntarily his or her wish to die, must make a written request for the medication, and be found by the person's attending physician and a consulting physician to be suffering from a terminal disease. At least 15 days must lapse between the patient's initial oral request and the writing of the prescription for the medication, and no less than 48 hours must lapse between the patient's written request and the writing of the prescription.
>
> *The Act states that ending one's life in accordance with its provisions does not constitute suicide, assisted suicide, euthanasia, mercy killing or homicide* (emphasis added). A physician or person other than the patient cannot directly administer the medication to end the patient's life; only the patient can do this. Any person who provides other assistance, in compliance with the provisions of the Act in good faith, is protected from criminal or civil liability or from professional censure. The Act also prohibits an insurance company from requiring an insured to use the Act or for penalizing a person if the person does so.

Here are some interesting statistics that may provide indications for how the people of New York will utilize our new MAID rights.

The population of Oregon according to the 2020 census is officially recorded at 4,237,256 residents, a 10.6% increase from 2010.

As to utilization, the Oregon Health Authority reports (excerpts):

Utilization:	Persons Obtaining Prescription	Deaths from Ingestion
1998	24	16
2010	97	59
2020	373	259
2024	607	376
Total	4.581	3,243

Persons with cancer represent 59.9% of all deaths from ingesting terminal medication for all years. The average number of persons who took the medication dying at home was 92.6% for all years.

Attending physicians who wrote prescriptions: 22 in 2000; 168 in 2023 and 259 in 2024.

The authority's reports state that *no incidents of abuse has been reported.*

The Oregon experience provides important lessons for New York legislators, agency leadership and the public. Two of the most significant are that only a limited number of people will die through MAID and that ingesting terminal medication cannot be considered suicide for any purpose.

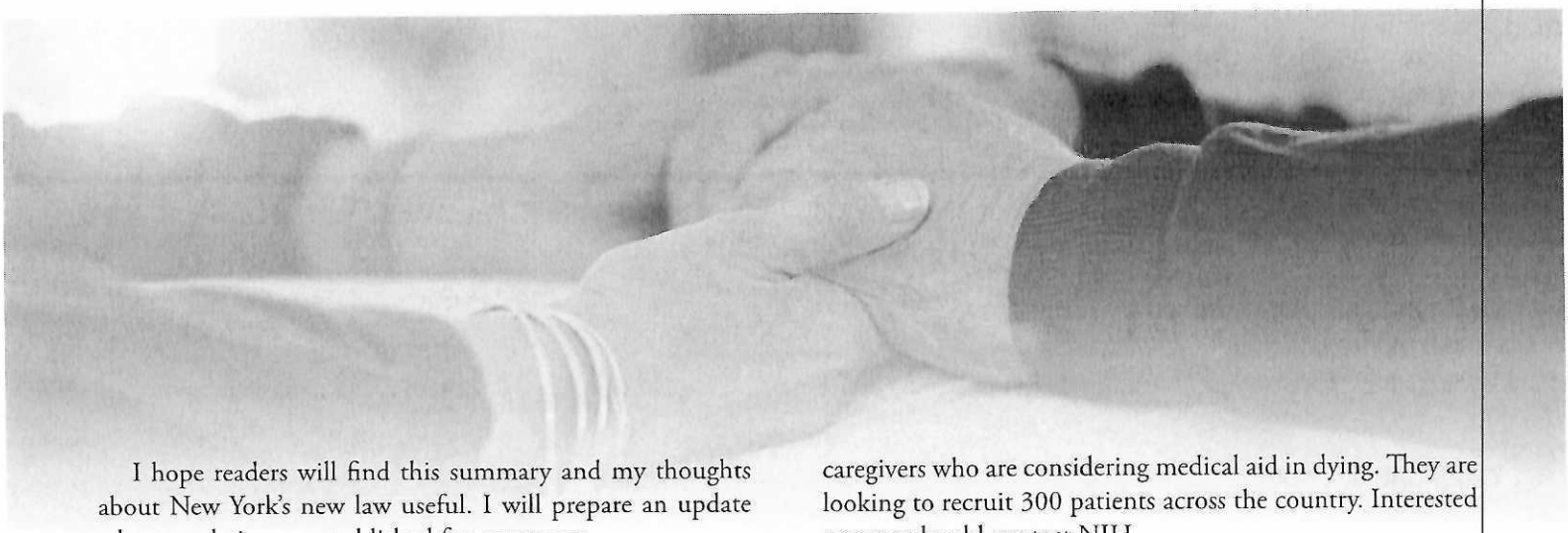
Our colleague, David Leven, the retired executive director of End of Life Choices New York, often notes that *suicide is an act done by a person who can live but chooses not to, but utilizing MAID is an act of a person who wishes to live but cannot.*

The enactment of this law marks a significant shift in New York's legal landscape, praised by supporters and criticized by opponents alike, but its passage is only the beginning. The next phase will require careful implementation, including the development of clear and comprehensive regulations that ensure the law's critical safeguards are fully observed.

Equally important is the need for responsible community education, as well as robust training for physicians who will counsel patients considering MAID and prescribe the medication. These professionals must understand the law's nuances and be equipped to apply it in a manner consistent with legislative intent and each patient's individual circumstances. Attorneys advising clients in this area will likewise require a strong working knowledge of the statute. Consideration should also be given to incorporating formal training requirements into the regulatory framework.

In any event, attorneys should ensure that clients have their advance directives (a durable power of attorney, a health care proxy and living will (known also as a Health Care Declaration) in place. A health care declaration and/or a health care proxy does not constitute consent to MAID. However, if there is a question as to undue influence with a patient who requests terminal medication, an advance directive stating that person's positive view about MAID might be important.

As the governor said about her decision to sign the new law: "Although this was an incredibly difficult decision, I ultimately determined that with the additional guardrails agreed upon with the legislature, this bill would allow New Yorkers to suffer less – to shorten not their lives, but their deaths."



I hope readers will find this summary and my thoughts about New York's new law useful. I will prepare an update when regulations are published for comment.

Appendix 'A'

Excerpt from the Oregon Health Authority's 2024 Report

During 2024, 607 people received prescriptions for lethal doses of medications under the provisions of the Oregon DWDA, compared to 561 reported during 2023 (Figure 1). As of January 25, 2025, OHA had received reports of 376 people who died during 2024 from ingesting the medications prescribed under the DWDA, a slight decrease from 386 in 2023. Of these deaths, 23 patients (6% of DWDA deaths) had outlived their prognosis – that is, lived more than six months after receiving their prescription. Since the law was passed in 1997, a total of 4,881 people have received prescriptions under the DWDA and 3,243 people (66%) have died from ingesting the medications. During 2024, DWDA deaths accounted for an estimated 0.9% of total deaths in Oregon. In 2023, the Act was amended to remove the residency requirement for patients receiving medical aid in dying. To track the number of prescriptions written for patients living outside of Oregon, OHA began collecting basic residence information (resident vs. non-resident) for each patient at the time the prescription was received. In 2024, 23 prescription recipients (4%) lived outside of Oregon, a slight decrease from 29 (5%) in 2023. Figure 2 shows a summary of DWDA prescriptions written and medications ingested. Of the 607 patients for whom prescriptions were written during 2024, 333 (55%) died from ingesting the medication. An additional 96 (16%) did not take the medications and later died of other causes. At the time of reporting, ingestion status was unknown for 178 patients (29%). Of these, 91 patients have died but follow-up information is not yet available. For the remaining 87 patients, both death and ingestion status are not yet known (Figure 2). The percentage of total deaths is calculated using the total number of deaths.

Other Important Information

The National Institutes of Health is currently recruiting for a study to understand the experiences of patients and caregivers who are considering medical aid in dying. They are looking to recruit 300 patients across the country. Interested persons should contact NIH.

End of Life Choices New York is working with the Academy of Aid-in-Dying Medicine to develop resources and educational materials. This will be an excellent resource for implementation of excellent aid-in-dying care.[2]

End of Life Choices New York is already getting requests from people asking to be connected to doctors and other clinicians who can support them once the law goes into effect. But we won't know who is providing MAID services unless members of the community tell us. If readers know of a clinician of any sort (doctor, nurse, social worker, chaplain, volunteer, doula, etc.), EOLCNY has prepared a survey so information can be collected and made available to the general public.

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Assistance in editing this article by **Mandi Zucker**, executive director of End of Life Choices New York and **David Leven**, former executive director of EOLCNY, is acknowledged and appreciated.

Endnotes

1. The statutory provisions noted in this article are a highlight of the most important requirements of the new law. Readers may have their own view of what is "most important" and are cautioned to read the entire new law.
2. The New York Alliance for Medical Aid in Dying is a collective effort of End of Life Choices New York, Compassion & Choices, The Completed Life Initiative, Death with Dignity and Death with Dignity – Albany, working together to enact medical aid in dying in New York State.