A Proposal to Improve the Medical Aid in Dying Act:
Let's Restore the Original Definition of Self-Administration

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New York's proposed Medical Aid in Dying Act should be improved by abandoning the new definition of self-administration that appeared in 2021 and restoring the original definition that was first introduced in 2016. The new definition restricts the method of administration to be ingestion only. As a result, qualified persons who cannot ingest the medication could not benefit from the law. Restoring the original, unrestrictive, definition would open the door for these persons to receive medical aid in dying.

An essential feature of all Medical Aid in Dying (MAiD) laws in the U.S. is that the prescribed medication must be self-administered. If a physician were to administer the medication at the request of the patient, it would be an act of voluntary euthanasia — which remains outlawed.

The original wording of the definition of self-administration in New York's proposed law appeared in bill A10059 (2016) and continued into A4321 (February 1, 2021):

> "Self-administer" means a qualified individual's affirmative, conscious, and voluntary act of using medication under this article.

The bill was approved by the Assembly Health Committee in May 2016, and in the spring of 2018 the Committee held public hearings in Albany and New York City. This definition was never an issue; it was not a target of the bill's opponents.

The new wording first appeared in A4321A (as amended April 1, 2021) and S6471 for 2021–2022, and it remains in the current bills (A995C, S2445C):

> "Self-administer" means a qualified individual's affirmative, conscious, and voluntary act to ingest medication under this article. Self-administration does not include lethal injection or lethal infusion.

The key change is that the original phrase "act of using medication" has been replaced by "act to ingest medication" to define what self-administration means. By specifying that ingestion is the only allowable method of administration, the new definition excludes other methods — such as intravenous injection/infusion, inhalation, and other methods that might be developed — that were allowable under the original definition. As a result of this change, patients who cannot ingest the medication would not be eligible for MAiD, whereas they would have been eligible under the original definition.

Among states that currently have MAiD laws, the majority require that the method of self-administration be ingestion. However, three do not: Vermont, New Jersey, and Hawaii. The laws in these three states differ in terms of how they describe the methods of self-administration that may be used: New Jersey and Hawaii have definitions of "self-administer" in their laws, but Vermont does not. (The legal wording used in Vermont, New Jersey, and Hawaii is presented in the Appendix.)

Definitions (and other descriptions) of self-administration that place no restriction on the methods that can be used are referred to here as "unrestrictive". The original definition of self-administration in New York was unrestrictive.

The Case for Restoring the Original Definition

When a MAiD law has an unrestrictive definition of self-administration, a physician can prescribe medication and determine the method by which it is to be

used according to the needs of the patient and the available medicine and technology. Thus, the law allows for the normal practice of medicine within the framework of MAiD safeguards and eligibility requirements. By contrast, when a MAiD law specifies ingestion as the only method that can be used, the law interferes in the practice of medicine.

It may be an accident of history that early MAiD laws limited the method of administration to ingestion. Oregon's Death with Dignity Act was written and approved thirty years ago, just a few years after a Portland resident become the first patient to die with the assistance of Dr. Jack Kevorkian in Michigan. He had developed an apparatus by which a patient could self-administer three drugs intravenously, in sequence, by pressing a button once. Kevorkian's action led to national controversy, and the authors of Oregon's law wanted to stay clear of that in order to get the measure approved by the voters. Advocates in favor of the measure touted that it would not allow "suicide machines". Oregon's law became the model that other states have followed.

In the practice of MAiD in the U.S. today, nearly all cases involve the ingestion of several drugs prepared as a powder by a compounding pharmacy. Most often the medication is taken by mouth, with the patient drinking water or juice in which the powder has been mixed. Other times the same medication is self-administered by using a feeding tube or rectal catheter. These three ways of taking the medication are included in the legal concept of ingestion, which is simply that the route of administration is gastrointestinal.

In Switzerland today, assistance with both ingestion and self-administered intravenous injection is provided under a long-standing legal framework. With intravenous administration, patients start the flow of the medication by using a control mechanism that is activated by their hand, arm, foot, or in other ways.

Beyond ingestion and intravenous self-administration, other methods — including non-intravenous injection, inhalation, and the application of transdermal patches — await further development for MAiD use. An unrestrictive definition of self-administration is open to all methods. It is forward looking.

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The most important reason for not restricting methods of administration to ingestion only is to remove a barrier that prevents some qualified patients from accessing the benefits of the law. There are at least two groups of people who cannot self-administer the medication by ingestion: some people have gastrointestinal complications that make it impossible or unwise, and some people do not have sufficient strength or manual dexterity (perhaps because of a neurodegenerative disease such as ALS or Parkinson's).

To expand on this point, we present the testimony given to Oregon's Senate Judiciary Committee by Dr. Charles Blanke in 2019 in favor of a bill that would have allowed intravenous and other methods to be used by patients under the state's MAiD law. His testimony has been condensed and edited:

> Good morning. My name is Dr. Charles Blanke. I am a medical oncologist and end of life specialist. My clinic is located at Oregon Health and Science University, and I also make house calls throughout the state.
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> My practice is composed of terminally-ill patients interested in Death with Dignity. Last year I wrote more Death-with-Dignity-related prescriptions than any physician in Oregon — about 15% of the total. What that number does not reflect, however, are all the patients I and others saw, who qualified for Death with Dignity but were unable to use the measure.
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> Patients in my practice mirror those seen across our state. Many have swallowing difficulties and are afraid they will not be able to "ingest" the medications, as currently required by law. They are terrified they will only be able to force down a partial, non-fatal dose, and that they will then wake up, or worse, remain in a permanent coma. I am convinced some take their lives too early, because they are afraid their swallowing will only get worse.
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> Additionally, there are many terminally ill Oregon residents who, from the outset, cannot swallow at all. Though some well-meaning but medically inexperienced proponents suggest that using a feeding tube would be a simple fix, most of those patients would be wholly unable to push the plunger of a syringe attached to the tube. They literally cannot

> self-administer the medication. These patients fully qualify for Death with Dignity but are being deprived of their chance to use a measure supported by 80% of Oregonians, because of a disability.
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> No US state, including Oregon, allows euthanasia. The new wording [which would allow intravenous self-administration] does not change that position one drop, not legally or practically. While we are still developing an effective intravenous combination, whatever the practicing physicians of Oregon come up with, it will still be, in all cases, the terminally-ill patient who directly administers the medication — not the doctor.
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> There is no extra protection or particular dignity, offered to patients by requiring the lethal medications be taken by mouth, feeding tube, or rectum — all currently legal but often unfeasible routes. Thank you.

Dr. Blanke's testimony is a plea to let physicians help their patients by practicing medicine freely, within the framework of the law's safeguards and eligibility requirements.

Opposition

The Oregon legislature's consideration of amending the Oregon Death with Dignity Act to allow methods other than ingestion marks a turning point in the development of MAiD laws in the U.S. It is a curious and interesting story, one that may explain why the definition of self-administration in New York was changed in 2021.

The law in Oregon does not contain the term "self-administer". When the patient's action is referred to, the verb "take" is used. Early in 2019, a bill (HB2217) was introduced in the House that would have brought "self-administer" into the law by creating a definition for it that explicitly allowed methods other than ingestion to be used. The bill also would have replaced all uses of the action verb "take" with "self-administer".

The bill met with substantial opposition, from persons and groups who opposed the existing law and also from some who supported it. In testimony to a House committee, Compassion & Choices said it would support the bill only if the original definition in the bill were replaced by one that it proposed. That definition was accepted, and the House approved the bill on April 22 with the support of Compassion & Choices and also Death with Dignity National Center. The approved definition was:

> "Self-administer" means a qualified patient's affirmative, conscious and voluntary act to take into his or her body medication to end his or her life in a humane and dignified manner.

The action of the patient is to "take [medication] into his or her body", which is close to the wording in Hawaii's 2018 MAiD law. The definition clearly is unrestrictive — it places no restriction on the method or route of administering the medication.

Soon after HB2217 was passed by the House, the two national groups realized that they had misunderstood what the definition actually allowed. They opposed the bill when it was considered on May 9 by the Senate Judiciary Committee — where it died. They argued strongly against allowing intravenous self-administration, saying that a feeding tube or rectal catheter could be used by patients who could not take the medication orally. Explaining the definition Compassion & Choices had proposed, they said they had wanted only to clarify that ingestion (including by feeding tube or rectal catheter) would be the only method allowed.

Following this experience in 2019, these two national groups have used their considerable influence to work quietly but effectively against unrestrictive definitions of self-administration in other states' laws. This can be seen, first, in changes that were made to MAiD bills that had been introduced previously in various states. In 2023, 15 states considered bills to enact new MAiD laws. All these states had previously considered similar bills, either in 2019 or 2020. In seven of the 15 states, the 2019 version of the bills had unrestrictive definitions of self-administration. By 2023, only one of these seven maintained the original definition. In six, the unrestrictive definition had been replaced by an ingestion-only definition of self-administration. New York was one of the six.

The new definitions in the six states were all similar to New York's 2021 definition, which is repeated here:

> "Self-administer" means a qualified individual's affirmative, conscious, and voluntary act to ingest medication under this article. Self-administration does not include lethal injection or lethal infusion.

In each of the six new definitions, the first sentence is a simple and clear statement that self-administration is a patient's act of ingesting the prescribed medication. The second sentence points out the (obvious) implication that intravenous methods are not considered self-administration (because they are not types of ingestion). No ingestion-only MAiD laws enacted or proposed before 2020 contained such a statement in their definitions of self-administration. The presence of the second sentence reflects the post-2019 concern, and the influence, of the two national groups — it is as though they left their calling cards.

The quiet but effective influence of the two national groups seems to have been present also in the amendments made to Colorado's existing End of Life Options Act in 2024. On their websites and in their newsletters, these groups favorably describe most of the changes that were made. However, the groups do *not* mention the fact that the amendments also change the definition of self-administration from one that was unrestrictive to one using the new two-sentence style that allows only ingestion. If this change were important enough for Colorado to enact it, and if it were a change the groups the groups favored, why did they not mention it?

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What concerns might there be about proposing or having an unrestrictive MAiD law? One might be that allowing patients to use non-ingestion methods of self-administration will appear to legislators and the general public as being steps towards euthanasia, thereby making it more difficult to adopt new MAiD laws. This notion about appearance may have had some merit in the past, but it no longer does.

In recent years rectal administration (which is a form of ingestion) has become increasingly common, because this allows some patients who cannot take the medication orally to still benefit from MAiD. Rectal self-administration is not a

simple procedure like drinking a glass of medication. Typically, a medical professional is required to insert a catheter correctly, fill and connect a large syringe, and oversee the procedure. The patient needs to depress the plunger at an appropriate rate to empty the syringe.

In comparison, under an unrestrictive law, intravenous self-administration could be used when a patient cannot take the medication orally or even rectally. This is not a simple procedure either. Typically, intravenous administration (as practiced in Switzerland) requires a medical professional to insert a cannula (connector) into the patient's hand or arm, connect it with a tube to the source of the medication, and oversee the procedure. The patient needs to use a control mechanism to begin the flow of the medication.

Both methods require the active participation of health-care professionals and involve the use of medical devices. Intravenous injection is not any more like euthanasia than rectal ingestion is. The public can see this, and an unrestrictive MAiD law is as likely to be accepted as one requiring ingestion.

There are other similarities among methods of administering medication that are relevant to note. With ingestion, oral or rectal, the medication goes into the gastrointestinal system and then is absorbed into the bloodstream. With inhalation, the medication goes into the lungs (via the throat, like oral ingestion) and then is absorbed into the bloodstream. With intravenous administration, the medication goes directly into the bloodstream. Regardless of the method used, the medication needs to get into the bloodstream.

To paraphrase Dr. Blanke: There is no extra protection or particular dignity offered to patients by requiring the medication to be taken by ingestion rather than by other methods of self-administration.

Conclusion

The 2021 change in the definition of self-administration in New York's proposed Medical Aid in Dying Act (a change that specifies ingestion to be the only method allowed) was a throwback to the earliest days in the development of MAiD in Oregon, 30 years ago. What was path-breaking then now stands in the

way of new methods of self-administration, as medical practice and technology continue to evolve.

Across the nation in recent years, various barriers to accessing MAiD — including waiting periods and residency requirements — have been reduced or eliminated in existing and proposed laws. These changes have received the active support of national MAiD advocacy organizations.

Ingestion-only definitions of self-administration are also barriers to access, denying the benefits of MAiD to people who cannot the ingest medication. Why not change these definitions also? In 2024 a bill (SB1196) was introduced in the California Senate to amend the End of Life Option Act by allowing intravenous self-administration in addition to ingestion. We can do better than adding just one method. Let's move forward by going back to the original New York definition!

If the definition of self-administration is left to be ingestion only, New Yorkers will ask "Why are persons who cannot ingest the medication being denied the benefit of a compassionate choice at the end of life?"

New Yorkers will also ask "Why are we being denied the same options that are available to our neighbors in New Jersey and Vermont?"

Notes and References

• The wording used regarding self-administration and related features of MAiD laws was carefully examined by Thaddeus Pope, a leading legal scholar of MAiD law. He concluded that there is no legal obstacle to intravenous self-administration in states having an unrestrictive description of self-administration. See: Thaddeus Mason Pope, "Medical Aid in Dying: Key Variations Among U.S. State Laws", Journal of Health and Life Sciences Law, October 2020, Vol. 14, No. 1, pgs. 25–59. A reprint is available at:
https://www.thaddeuspope.com/images/Pope_-_J_HEALTH_LIFE_SCI_LAW_2020_MAID.pdf

(The relevant section is journal page numbers 43–49, which appear as pages 22–28 of the pdf file in this article reprint.)

• The public record of the Oregon legislature's consideration of HB2217 in 2019 is available at:
https://olis.oregonlegislature.gov/liz/2019R1/Measures/Overview/HB2217
(This provides access to the text, legislative history, and testimony for the bill.)

Appendix: States in which Self-Administration is Unrestrictive

Vermont, "Patient Choice at End of Life Law" (Act 39), Approved May 20, 2013. Effective May 20, 2013. Vermont Statutes Annotated, Title 18, Chapter 113.

There is no definition of "self-administer".

There are repeated uses of the phrases "medication to be self-administered for the purpose of hastening the patient's death", "self-administer a lethal dose of medication", and their variants.

There is no use of the word "ingest" or its variants (ingesting, ingestion, etc.) anywhere in the law.

New Jersey, "Medical Aid in Dying for the Terminally Ill Act", Approved April 12, 2019. Effective August 1, 2019. P.L.2019, c.59 (C.26:16-1 et seq.).

C.26:16-3 Definitions …

"Self-administer" means a qualified terminally ill patient's act of physically administering, to the patient's own self, medication that has been prescribed pursuant to [this law].

There is no use of the word "ingest" or its variants anywhere in the law.

Hawaii, "Our Care, Our Choice Act", Approved April 5, 2018. Effective January 1, 2019. Hawaii Revised Statutes, Chapter 327L.

§327L-1 Definitions.

"Self-administer" means an individual performing an affirmative, conscious, voluntary act to take into the individual's body prescription medication to end the individual's life pursuant to this chapter.

There is no use of the word “ingest” or its variants anywhere in the law.

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