

California's End of Life Option Act

Talking Points

April 2016

California's End of Life Option Act, signed into law by Governor Jerry Brown in October 2015, will take effect on June 9, 2016. The Act allows an adult who has been diagnosed with a terminal illness and who has a life expectancy of no more than six months to request and be prescribed an aid-in-dying drug, if specified conditions are met. In order to qualify for the aid-in-dying medication, the patient must have the capacity to make medical decisions for him/herself, be a resident of California, make three voluntary requests (two oral and one written) and have the ability to self-administer the medication.

- California's hospitals are on the front lines of care, open 24 hours a day, seven days a week to anyone in need of care. Hospitals are where life's greatest joys and deepest sorrows play out every hour of every day.
- Providing comfort and support to patients and their families during the final phase of life is at the heart of what hospitals and their caregivers do every day.
- Hospitals encourage physicians, patients, families, loved ones, religious representatives and caregivers to have open conversations about medical care and end-of-life wishes. This includes completing an Advance Health Care Directive that explicitly states the patient's end-of-life preferences while the patient has the capacity to understand the consequences of their decisions.
- California's new End of Life Option Act is not intended to alter the mission or role of hospitals in caring for dying patients. Rather, it allows terminally ill patients who are able to make a conscious and voluntary choice about their final days to do so, and allows physicians, if they choose to do so, to assist these patients by providing them with information and a prescription for aid-in-dying medication.
- In most cases, the activities associated with the End of Life Option Act will not occur within a hospital; instead they are more likely to occur in doctors' offices and patients' homes. Hospitals, however, should be aware of this new law and develop appropriate policies to guide their staff and patients.
- Participation in activities authorized by the End of Life Option Act is completely voluntary. No person (including a physician), hospital, pharmacy or other entity that objects based on conscience, morality or ethics is required to provide any services in support of this new law.

- Additionally, hospitals and other health care providers may prohibit their employees, medical staff, independent contractors and others from engaging in any activities associated with the End of Life Option Act in two situations. These are:
 - A) While those individuals are on premises owned or under the management or direct control of the provider (e.g. clinics, pharmacies, medical office buildings, etc.)

or

 - B) While those individuals are acting within the course and scope of any employment by or contract with the provider (e.g. home health and hospice workers, etc. who work away from the provider-owned or managed premises.)
- Hospitals, however, cannot prohibit their employees, medical staff, independent contractors or others from providing information about the End of Life Option Act to patients or others; nor can they prohibit them from referring a patient to another provider for the purposes of participating in activities authorized under the End of Life Option Act.
- A hospital that chooses to have a policy prohibiting participation in activities under the End of Life Option Act must provide written notice to those individuals and/or entities. The notice must be a separate statement specifying its policy on aid-in-dying assistance.
- California's End of Life Option Act establishes a very specific set of requirements for patients who wish to take advantage of this law:
 - The patient must be an adult (18 years of age or older) with a terminal disease (defined as “an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgement, result in death within six months”).
 - The patient must be a resident of California and have the mental capacity to make this decision for him/herself.
 - The patient must make three separate requests for an aid-in-dying medication to his or her attending physician:
 - Two oral requests at least 15 days apart **and**
 - One written request on a form prescribed in the Act. This form must be signed and dated by the patient in the presence of two witnesses. There are limits on who may serve as a witness to the patient's written request:
 - Neither of the witnesses can be the patient's attending or consulting physician or mental health specialist.
 - Only one of the two witnesses may be related to the patient or entitled to a portion of the patient's estate upon death.

- Only one of the two witnesses may own, operate or be employed at a health facility where the patient is receiving medical treatment or resides.
- The request for aid-in-dying medication must be made solely and directly by the patient. The request cannot be made on behalf of the patient by anyone else, including the patient's legally recognized health care decision-maker.
- The patient must be making an informed decision with respect to the request, which means that the patient's attending physician must discuss with the patient all of the following things:
 - The patient's medical diagnosis and prognosis.
 - The potential risks associated with ingesting the requested aid-in-dying drug.
 - The probable result of ingesting the aid-in-dying drug.
 - The possibility that the patient may choose to obtain the aid-in-dying drug but not take it; and
 - The feasible alternatives or additional treatment options including but not limited to comfort care, hospice care, palliative care and pain control.
- The patient must have the physical and mental ability to self-administer the aid-in-dying medication.
- If the patient speaks a language other than English, the request for aid-in-dying medication must be made to the attending physician (orally and in writing) in the patient's primary language. However, the required written form ("Request for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner") may be prepared in English even when the oral conversations occur in a different language. The patient may utilize the assistance of an interpreter, as long as the interpreter is not related to the patient by blood, marriage, registered domestic partnership or adoption, or be entitled to a portion of the patient's estate upon death.
 - CHA has developed a comprehensive set of guidelines to assist hospitals in the development of policies and procedures related to the End of Life Option Act. These guidelines can be found in Chapter 5 of CHA's 2016 Consent Manual.
 - California's End of Life Option Act is a complex and controversial law that touches on important social, philosophical, ethical, moral and religious beliefs. Every hospital and health care provider must make their own decision as to whether they wish to assist terminally ill patients in choosing to end their life through aid-in-dying protocols.