End of Life Option Act ("The Act")

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End of Life Option Act (previously referred to as Physician Assisted Suicide) ABX2 15

- After decades of California rejecting prior legislation and initiatives seeking to legalize “physician assisted suicide,” the Legislature passed the “End of Life Option Act” in December 2015 during a “Special Session”
- Effective Date: June 9, 2016
Covered in detail in Chapter 5 of Consent Manual

Oregon Experience

Oregon 2015 Report
- 218 patients given a prescription, 132 took the drug
- Mostly cancer (75%) and ALS (7%) patients. Also heart, respiratory disease, HIV
- 90% took the drug at home; rest in SNF/hospice
- Only one patient died in a hospital between 1998 - 2015
- Drug: usually secobarbital, pentobarbital, or phenobarbital/chloral hydrate/morphine sulfate mix
Overview

- Who can access — patient qualification
- Attending physician and consulting physician responsibilities
- Documentation requirements
- Special rules about prescribing
- Interpreter requirements
- Opting out
- Forms

The Big Picture

- Development of a policy is a starting point and it should be considered an “evolving” document based on experience with the new law
- Implementation planning is key:
  - Entry point for patients wishing to access the law — how easy is access to appointments?
  - Workflow
  - Educational material

End of Life Option Act

Who can access this law?

- Adults with terminal disease and who meet other qualifications may make a request for a drug for the purpose of ending their life
**Patient Qualifications**

- 18 years of age and capacity
- Terminal diagnosis by two physicians (attending and consulting): “incurable and irreversible disease … that will, within reasonable medical judgment, result in death within six months
- California resident
- Must not be suffering from mental illness interfering with decision making capacity
- Must make two oral requests separated by 15 days and one written request

**Residency Requirements**

It’s not difficult to establish one of the following:
- Possession of a driver license or ID card issued by the State of California
- Registration to vote in California
- Evidence that the patient owns, rents or leases property in California
- The filing of a California tax return for the most recent tax year

**Basic Elements**

- Patient request must be voluntary, not coerced (as determined by the attending physician)
- The patient must be able to self-administer the drug
- There are witnessing requirements for the forms — two adults
- Interpreter requirements set forth competency needed
Basic Elements – Drug Dispensing

• Special rules on how the drug prescription is written — prescription form cannot be handed to the patient
  • Pharmacist may dispense to patient, attending MD or patient-designated person
  • Prescription may be delivered in person, or with signature required by US Postal Service, UPS, Federal Express, or messenger

Reporting to CDPH

• CDPH reporting requirements — must provide forms and “End of Life Option Act Attending Physician Follow-Up Form”
  • Question: Who will do this?
    • Office of Regulatory Affairs?
    • Physician’s office?

Attending MD*

• Attending is defined as the MD who has primary responsibility for the health care of the patient and treatment of the patient’s terminal disease (primary care doctors don’t usually take care of cancer?)
• At UCSF, residents and fellows do not qualify as an attending physician
• * Attending as used in statute does not mean a teaching physician
**Attending MD Duties**

- The attending physician’s duties are non-delegable and MD must explain all of the patient’s end-of-life options and make many other determinations (see next slide)
- Remember: Even if a physician who is treating a patient with a terminal disease decides to opt out of participating in The Act, the physician must discuss other end-of-life options per prior California law

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**Attending MD Must Determine:**

- Terminal disease and six-month prognosis
- That the request is voluntary
- That no coercion is involved (meet separately with patient)
- That the patient has made an informed decision (statute outlines elements)
- That the patient has met all the criteria
- Refer to a consulting physician

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**What is an Informed Decision?**

- Diagnosis, prognosis
- Potential risks and results of taking drug
- Possibility that patient may choose not to obtain the drug or decide not to use it
- Alternatives or additional end-of-life treatment or palliative options
Patient May Change Mind

- Patient can change his or her mind at any time — even if the patient has no capacity
- e.g., what if patient takes meds, things don’t go well and family calls 911 and patient is brought to the ED?
- Does the ED physician have to determine if the patient has changed his or her mind?
- Your ED may need some guidance

A Big Footnote

- Even before The Act was enacted, under California law, providers are obligated to discuss end-of-life options with their terminally ill patients
- Are we meeting that obligation?

Obligation to Discuss End-of-Life Options Unrelated to “The Act”
Law for All: Discussing End-of-Life Care Options

- When a health care provider makes a diagnosis that a patient has a terminal illness, state law requires that the provider must provide specified information and counseling regarding legal end-of-life care options.
- The information may be given verbally or in writing.
- So, even if a provider opts out of participating in the End of Life Option Act, the provider still needs to tell a terminally ill patient about other end-of-life options.

AB 2139 (Last Year)

The obligation to provide end-of-life care options is REQUIRED:
- At the time of diagnosis or a subsequent visit when treatment options are discussed.
- Provided to patient or surrogate.
- Not required if already given.
- Must be done in a culturally-sensitive manner.
- Provider retains right to use clinical judgment in recommending course of care (amendments sought by oncologists and CMA prior to withdrawing opposition to bill).

End-of-Life Information to Be Provided

1. Information about hospice care at home or in a health care setting.
3. The patient’s right to refusal of, or withdrawal from, life-sustaining treatment.
4. The patient’s right to continue to pursue disease-targeted treatment, with or without concurrent palliative care.
End-of-Life Information to Be Provided (cont.)

5. The patient’s right to comprehensive pain and symptom management at the end of life
6. The patient’s right to give an individual health care instruction pursuant to Probate Code section 4670 (advance directive)
7. Upon request by patient or surrogate, patient should be referred to appropriate entity for information about cost of care

Possible Policy Language Regarding: Other Relevant Policies

The requirements outlined in this policy do not preclude or replace other existing policies, including but not limited to, Withdrawing or Forgoing Life Sustaining Treatment, Pain Management, Advance Directives/POLST, Resuscitation Status (DNR) or End-of-Life Care, referenced herein.

End of Life Option Act

Now, Back to “The Act”
The Act: The Attending MD

Must counsel the patient:
• To have another person present when meds taken (not in a public place)
• To notify next of kin (not required to be eligible to utilize the Act)
• To participate in hospice
• To keep the drug in a safe place until use

The Act: The Attending MD

Must:
• Make it clear that the patient may withdraw or rescind at any time (even if the patient has lost capacity)
• Verify before writing the prescription that the patient still wants it
• Complete a mandated checklist
• Refer to mental health specialist if concerns of a mental disorder

The Act: Consulting MD

• “Consulting physician” must be independent* from the attending physician and qualified by specialty or experience to make a professional diagnosis regarding a patient’s terminal disease

*Not defined in the statute — not a treating physician? Separate institution or medical group? Residents and fellows not eligible
The Act: Consulting MD

• Similar duties to attending MD:
  o Must complete consulting physician mandated form
  o Residents and fellows cannot act as a consulting MD
  o Cannot be a relative or entitled to a portion of the patient’s estate

• Must examine patient and relevant medical records
• Confirm diagnosis and prognosis in writing
• Determine mental capacity and voluntary decision
• Refer to mental health specialist if indication of mental disorder

Documentation Requirements are Significant

Documentation requirements for attending and consulting MD include (see statute):
• Oral and written requests
• Patient meets the criteria per the statute
• Results of mental health evaluation (if done)
• Offers to withdraw or rescind
• Note that all requirements met
Mental Health Specialist

- Psychiatrist or licensed psychologist
- Not a relative or a person who will inherit
- Must examine patient and records (no mandate on number of visits)
- Determine mental capacity and voluntary decision
- Determine that patient is not suffering from impaired judgment due to mental disorder
- Document all of the above

Additional Safeguard of Mental Health Evaluation — Policy Language

- In consideration of the vulnerabilities of particular patient populations including, but not limited to, patients with lack of social support or patients with disabilities, [Hospital] requires a thorough assessment for consent and capacity determination beyond what is required by the Act. All patients who request an aid-in-dying drug will receive a mental health evaluation. These safeguards will serve the objective of protecting individuals who might seek aid-in-dying drugs but are not capable of making an autonomous and informed choice.

Ethics Committee Involvement — Policy Language?

If there is concern regarding the voluntariness of the patient’s request by any member of the health care team, or if there is disagreement between health care team members regarding whether the patient’s needs can be met in ways other than by a prescription for an aid-in-dying drug, these concerns must be shared with the Ethics Committee who will pursue the concerns with the utmost seriousness to avoid inappropriate utilization or application of the Act. Aid-in-dying drugs will not be prescribed at any time in the presence of concerns on the part of [Hospital] regarding the voluntary nature of the request.
End of Life Option Act: Five Forms

• Patient Request for Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner (H & S Code 443.11 a-b)
• Final Attestation for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner (H & S Code 443.11 c)
• Attending Physician Checklist & Compliance Form (H & S Code 443.22)
• Consulting Physician Compliance Form (H & S Code 443.22)
• Attending Physician Follow-up Form (H & S Code 443.22)

All forms are on the CD inside your Consent Manual

Opting Out of the Act

Institutions and persons have the right to opt out. Requirements set forth in the law:

• May prohibit physicians and employees from participating while in the course and scope and on premises
• Cannot control discussion or referral
• If you opt out, you have no duty to refer the patient to someone who will participate
• Must give notice to employees of intention to opt out

Opting Out — Individual Decision

Hospital does not mandate that any provider participate in the Act nor encourage any provider to do so. Only those providers who are willing and desire to participate should do so. Those persons who do choose to participate are reminded that the overall goal is to support the patient’s end-of-life wishes, and that participation may not necessarily result in aid-in-dying drugs being prescribed if patient needs can be met in other ways (e.g., hospice or palliative care).
Individual Opt Out

- June works in the Cancer Center as a front desk greeter and scheduler
- Patients have been calling or coming in and asking about The Act
- June feels uncomfortable and does not wish to participate in The Act
- What do you do?

Sample Opt Out Language

- Physicians, employees and volunteers may not knowingly participate in or facilitate use of the California End of Life Option Act and may not provide, deliver, administer, or assist with the administration of any medication intended to end a person’s life, or be present when a patient ingests medications with the intent of ending life.

Sample Opt Out Language

“provides end-of-life care that takes care of the physical, emotional, social and spiritual needs of the patient and his or her family. The end-of-life care provided is grounded in the values of respecting the sacredness of life, providing compassionate care to dying and vulnerable persons and respecting the integrity of health care providers. believes that compassionate, end-of-life care should neither prolong nor hasten the natural dying process……..“
The Death Certificate — Cannot be Used to Deny Insurance Benefits

- Initial bill specifically said NOT to mention use of The Act; final bill is silent
- Possible suggestion to maximize data collection:
  - Underlying cause of death: terminal disease
  - Manner of death: utilization of The Act
  - Antecedent cause: ingestion of aid-in-dying drug

What is UCSF Doing?

- Small task force developed draft policy
- Distribution of draft policy to key stakeholders for general comments
- Town Hall meeting for entire workforce
- Social work as a point of entry for patients requesting access to The Act

What is UCSF Considering?

- Mental health evaluation for all patients (based on Oregon recommendation)
- One of the involved physicians must have a special credential
- No ingestion on the premises
- Must be an established patient
- Safeguards allowing Ethics Committee review if any concern about voluntary decision
What is UCSF Considering?

• Reporting to Risk Management patients who utilize Act for monitoring of compliance with Act
• Having Regulatory Affairs file the final form with CDPH
• Upgraded requirements for interpreters (end-of-life training)
• Death certificate requirements
• General guidelines

What is UCSF Considering?

• Guidelines for physicians regarding:
  • Patient presentation to ED after ingestion
  • Physician’s response to a patient request for use of The Act
  • Physician communication with family (if allowed by patient)

Policy Development is Key

• Decide: Opt in or out?
• Implementing the policy is key:
  • Who is involved? Social work as point of entry?
  • Should you require MDs to be privileged?
  • On the premises or not?
  • MDs present at the time of death?
  • Psych evaluation required?
  • Death certificate — how is it filled out? Bill is silent
  • Do you want internal reporting for CDPH filing
  • Quality metrics?
"Social Workers who are well versed in the requirements of The Act will assist patients’ understanding of The Act, inform them about the process and provide educational material related to the patient’s end of life options. This activity will augment, but not substitute for, the obligations of the Attending and Consulting physicians described herein.

If a patient’s UCSF physician chooses not to participate in The Act, which is his or her right under the law, the social worker will assist in the identification of a physician who does participate."
Questions?

Thank you

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