

LOGO

**The California
End of Life Option Act
(Patient's Request for
Medical Aid-in-Dying)**

ADOPTION DATE:

APPROVED BY:
LAST DATE REVISED:
LAST DATE REVIEWED:

Office of Origin: _____

I. PURPOSE

- A. The California End of Life Option Act authorizes medical aid in dying and allows an adult patient with capacity to make a healthcare decision, who has been diagnosed with a terminal disease with a life expectancy of six months or less, and who meets all other requirements under the Act, to request a prescription for a drug (aid-in-dying drug) for the purpose of shortening a prolonged dying process through self-administration of the aid-in-dying drug.
- B. The purpose of this policy is to describe the requirements and procedures for compliance with The California End of Life Option Act and to provide guidelines for responding to patient requests for information about aid-in-dying drugs in accordance with federal and state laws and regulations and The Joint Commission accreditation standards.
- C. The requirements outlined in this policy do not preclude or replace other existing policies, including but not limited to Withdrawing or Foregoing Life Sustaining Treatment, Pain Management, Advance Directives /POLST, Resuscitation Status (DNR) or End-of-Life Care, referenced herein.

II. REFERENCES

- A. California Health and Safety Code section 443 et seq. (End of Life Option Act)
- B. California Probate Code section 4609
- C. HOSPITAL Administrative Policies:
 - 1. Advance Health Care Directives/POLST
 - 2. Patient Rights and Responsibilities
 - 3. Ethics Consultation
 - 4. Withdrawing or Foregoing of Life Sustaining Treatment
 - 5. End-of-Life Care
 - 6. Resuscitation Status (DNR)
 - 7. Pain Management
 - 8. Interpreting and Translation Services
 - 9. Employee Requests to be Excluded from Patient Care _____

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III. DEFINITIONS (for purposes of this policy)

- A. **Surrogate:** A surrogate decision maker can be an agent appointed in an advance health care directive or a durable power of attorney for health care, or a court appointed conservator of the person. When patients without such an agent or conservator lose capacity to make health care decisions, a family member, domestic partner or persons with whom the patient is closely associated may be considered to act as surrogates for health care decisions.
- B. **Capacity to Make Health Care Decisions:** A patient who, in the opinion of the patient’s attending physician, consulting physician or psychiatrist, pursuant to Probate Code section 4609, has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives and the ability to make and communicate an “informed decision” (defined herein) to health care providers.
- C. **Aid-in-dying Drug:** a drug determined and prescribed by a physician for a qualified patient, which the qualified patient may choose to self-administer to bring about his or her death due to a terminal disease.
- D. **Terminal Disease:** an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.
- E. **Attending Physician:** the physician who has primary responsibility for the healthcare of the patient and treatment of the patient’s terminal disease. An attending physician does not include a physician assistant or nurse practitioner. The attending physician may not serve as a witness to the patient’s written request for aid-in-dying drug.
- F. **Consulting Physician:** A physician who is qualified by specialty or experience to make a professional diagnosis regarding a patient’s terminal illness. A consulting physician does not include a physician assistant or nurse practitioner.
- G. **Mental Health Specialist:** Only a licensed psychiatrist or licensed psychologist may act as a mental health specialist. It does not include a physician assistant or nurse practitioner.
- H. **Informed decision:** A decision by a patient with a terminal disease to request and obtain a prescription for a drug that the patient may self-administer to shorten a prolonged dying process, that is based on an understanding and acknowledgement of the relevant facts,

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and that is made after being fully informed by the attending physician of all of the following:

1. The patient’s medical diagnosis and prognosis;
 2. The potential risks associated with taking the drug to be prescribed;
 3. The probable result of taking the drug to be prescribed;
 4. The possibility that the individual may choose not to obtain the drug or may obtain the drug but may decide not to ingest it; and
 5. The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.
- I. **Self-Administer:** a qualified patient’s affirmative, conscious, and physical act of administering and ingesting the aid-in-dying drug to shorten a prolonged dying.

IV. POLICY

- A. The End of Life Option Act (herein after the “Act”) allows adult (18 years or older) terminally ill patients, with capacity to make health care decisions, seeking to mitigate suffering and shorten a prolonged dying process, to request aid-in-dying drugs from an attending physician. These terminally ill patients must be California residents (as defined herein) who will, within reasonable medical judgment, die within 6 months. Patients requesting an aid-in-dying drug must satisfy all requirements of the Act in order to obtain the prescription for that drug. Such a request must be initiated by the patient and cannot be made through utilization of an Advance Health Care Directive, POLST or other document. It cannot be requested by the patient’s surrogate.
- B. [] Hospital (“HOSPITAL”) allows its physicians and other health care providers who are permitted under the Act to participate in activities authorized by the End of Life Option Act, if they so choose. HOSPITAL physicians and other health care providers may, as applicable and as defined in the Act and herein:
1. Perform the duties of an attending physician.
 2. Perform the duties of a consulting physician.
 3. Perform the duties of a mental health specialist.
 4. Prescribe drugs under this Act.
 5. Fill a prescription under this Act.

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6. Be present when the qualified patient self-administers the aid-in-dying drug provided that the physician does not participate or assist the patient in self-administering the life-ending drugs.
 7. Participate in patient or provider support related to the Act.
- C. When a patient makes an inquiry about or requests access to activities under the Act, the patient will initially be referred to HOSPITAL [Social Services Department or Patient Navigator Program]. [Social workers] who are well versed in the requirements of the Act will assist patient 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' roles described herein. If the patient's HOSPITAL physician chooses not to participate in the Act, which is his or her right under the law, a social worker will assist in the identification of a HOSPITAL physician who does participate. However, that physician shall, at a minimum, inform the individual that they do not participate in the End of Life Option Act, document the individual's date of request and provider's notice to the individual of their objection in the medical record, and transfer the patient's records upon request. This qualifies as the first oral request, which begins the 48 hour minimum waiting period.
- D. HOSPITAL neither encourages nor discourages participation in the Act; participation is entirely voluntary. 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 the patient's needs can be met in other ways (e.g. pain management, hospice or palliative care).
- E. Participation in activities authorized under the Act is completely voluntary. A HOSPITAL physician, staff or employee that elects not to engage in activities authorized by the Act is not required to take any action in support of a patient's request for a prescription for an aid-in-dying drug, including but not limited to, referral to another provider who participates in such activities.
- F. [HOSPITAL does not permit the ingestion or self-administration of an aid-in-dying drug in its hospitals, clinics or elsewhere on its premises. However, inquiry and discussion of such a request is permitted during a patient's hospitalization. An attending physician may prescribe the aid-in-dying drug after discharge so long as all the requirements of the Act are fulfilled (see section V for requirements).]

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- G. A mental health assessment is required by law only if the attending or consulting physician determines that the patient has indications of a mental disorder that impairs judgment.
- H. HOSPITAL may provide oversight and may review records to the extent necessary to ensure all requirements of the law have been followed and the correct documentation completed and submitted to the California Department of Public Health (CDPH).

V. PROCEDURES

A. Requirements of the California End of Life Option Act

- 1. Patients eligible to request aid-in-dying drugs from their physician: HOSPITAL adult patients who have capacity to make health care decisions and who have a terminal disease with a prognosis of six months or less.
- 2. Patients are qualified to receive a prescription for an aid-in-dying drug if all of the following conditions are met:
 - a. The patient meets the eligibility requirements.
 - b. The patient has voluntarily requested an aid-in-dying drug on three separate occasions as described herein;
 - c. The attending physician determines that the patient is making an informed decision and has fully informed the patient of all their available end-of-life options;
 - d. A consulting physician has provided a confirming opinion on the eligibility of the patient for a prescription for an aid-in-dying drug, and has confirmed that the person is acting voluntarily and making an informed decision.
 - e. The patient has the physical and mental capacity to self-administer the aid-in-dying drugs;
 - f. The patient is a California resident. Documents that can demonstrate residency include, but are not limited to:
 - i. Possession of a California Driver license or ID card issued by the State of California
 - ii. Registration to vote in California
 - iii. Evidence that the patient owns, rents or leases property in California

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- iv. The filing of a California tax return for the most recent tax year
 - g. A patient must not be considered a “qualified individual” under the Act because of age or disability.
 - h. The attending physician has fulfilled all the requirements of the law as set forth in the Attending Physician Checklist & Compliance form (HOSPITAL Form X).
3. Method of request for aid-in-dying drug and documentation requirements: Requests for aid-in-dying drugs must come directly and solely from the patient who will self-administer the drugs. Such requests cannot not be made by a patient’s surrogate or by the patient’s health care provider.
- To make a request for a prescription for an aid-in-dying drug, the patient must directly submit to his or her attending physician:
- a. Two oral requests (made in person) that are made a minimum of 48 hours apart. Patients who are unable to speak because of their medical condition shall communicate their request in a manner consistent with their inability to speak, such as through sign language. The attending physician must document these requests in the medical record (the Act does not specify any particular language); An oral request documented in an individual’s medical record shall not be disregarded by an attending physician solely because it was received by a prior attending physician or an attending physician who chose not to participate. AND
 - b. One written request using the form required by the State of California “Request for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner” (HOSPITAL Form X. This form must be placed in the patient’s medical record. Form X sets forth the following conditions:
 - i. The written request form (Form X) must be signed and dated, in the presence of two witnesses, by the patient seeking the aid-in-dying drug.
 - ii. The witnesses must also sign the form and by so doing attest that to the best of their knowledge and belief the patient is all of the following:
 - (a) An individual who is personally known to them or has provided proof of identity.

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- (b) An individual who voluntarily signed the request in their presence.
 - (c) An individual whom they believe to be of sound mind and not under duress, fraud or undue influence.
 - c. The patient's attending physician, consulting physician and mental health specialist cannot serve as witnesses. Additionally, only one witness may be related to the requesting patient by blood, marriage, registered domestic partnership or adoption or be entitled to a portion of the requesting patient's estate upon death or own, operate or be employed by a healthcare facility where the patient is receiving medical care or resides.
 - d. The request may not be made through a nurse, social worker, nurse practitioner or physician assistant. Any HOSPITAL employee or contractor must notify the attending physician about any patient request for aid-in-dying medication.
 - e. A documented request shall fulfill the requirement under the Act, regardless of whether the request was made by the patient's current attending physician. An attending physician shall not disregard a documented request solely because it was received by a prior attending physician or an attending physician who chose not to participate.
 - 4. Responsibility of the attending physician: The responsibilities of an attending physician are non-delegable. Before prescribing the aid-in-dying drug, the attending physician must do all of the following:
 - a. Make the initial determination about whether the patient is eligible under the Act as described in section A 1 above, including determination that:
 - i. The adult patient has capacity to make health care decisions
 - ii. The patient has a terminal disease with a prognosis of six months or less, medically confirmed by a consulting physician
 - b. Make additional determinations that:
 - i. The patient has made a voluntary request for an aid-in-dying drug, including completion of witness attestations that the patient is of sound mind and not under fraud, duress or undue influence

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- ii. The patient's request does not arise from coercion or undue influence. The physician must do this by discussing with the patient, outside the presence of any other person (except for a HOSPITAL-provided interpreter as described in Section 7 below) whether or not the patient is feeling coerced or unduly influenced by another person. Family members or friends of the patient cannot act as interpreters.
 - iii. The patient has met the residency requirements of the Act
 - iv. The patient is making an informed decision as defined herein.
 - c. Refer the patient to a consulting physician.
 - d. If the attending or consulting physician determines that the patient has indications of a mental disorder that impairs judgment, the patient must be referred for a mental health assessment. This assessment must be documented in the patient's medical record. Patients with depression are not automatically excluded and it must be determined that a mental illness is interfering with decision making capacity.
 - e. Counsel the patient about the importance of:
 - i. Having another person present when he or she ingests the aid-in-dying drug.
 - ii. Not ingesting the aid-in-dying drug in a public place. "Public place" means any street, alley, park, public building, or any place of business or assembly open to or frequented by the public, and any other place that is open to the public view, or to which the public has access. Public place does not include a health care entity.
 - iii. Notifying the next of kin of his or her request for an aid-in-dying drug. A patient who declines or is unable to notify next of kin must not have his or her request denied for that reason.
 - iv. Participating in a hospice program.
 - v. Maintaining the aid-in-dying drug in a safe and secure location until the patient takes it.
 - f. Inform the patient that he or she may withdraw or rescind the request for an aid-in-dying drug at any time and in any manner. The patient has the

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right to change his or her mind without regard to his or her mental state. Therefore, if a patient makes a request for an aid-in-dying drug while having capacity to make health care decisions, then loses his or her capacity, the patient can still decide not to take the aid-in-dying drug.

- g. Offer the patient an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing the drug.
 - h. Verify, for a second time, immediately before writing the prescription for an aid-in-dying drug, that the patient is making an informed decision.
 - i. Confirm that all requirements are met and all appropriate steps are carried out in accordance with the law (as outlined in this policy) before writing a prescription for an aid-in-dying drug.
 - j. Fulfill all the documentation requirements (see Section 6 below).
 - k. Complete the Attending Physician Checklist & Compliance form (HOSPITAL Form X) and place it as well as the completed Consulting Physician Compliance form (HOSPITAL Form X) in the patient's medical record. Arrange for the forms submittal to CDPH by the _____ Office.
 - l.
 - m. Complete the Attending Physician Follow-up form (HOSPITAL Form X) and submit it to CDPH through the _____ Office.
5. Responsibility of consulting physician: A physician who chooses to act as a consulting physician must not be involved in the patient's healthcare and must do all the following:
- a. Examine the patient and his or her relevant medical records.
 - b. Confirm in writing the attending physician's diagnosis and prognosis.
 - c. Determine that the individual has the capacity to make medical decisions, is acting voluntarily and has made an informed decision.
 - d. If the attending or consulting physician determines that the patient has indications of a mental disorder that causes impaired judgment, the patient must be referred for a mental health assessment. This assessment must be documented in the patient's medical record. Patients with depression are not automatically excluded and it must be determined that a mental illness is interfering with decision making capacity.

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- e. Fulfill the documentation requirements (see section 6 below).
 - f. Complete the State of California form "End of Life Option Act Consulting Physician Compliance form (HOSPITAL Form X).
6. Responsibility of mental health specialist: Protecting mentally ill patients, or patients lacking capacity, from receiving prescriptions for aid-in-dying drugs and to ensure a vigilant and systematic examination for physical or mental health conditions that could be interfering with informed decision making.

A psychiatrist or psychologist who chooses to act as a mental health specialist must conduct one or more consultations with the patient and do all of the following:

- a. Examine the qualified patient and his or her relevant medical records.
 - b. Determine that the patient has the mental capacity to make medical decisions, act voluntarily, and make an informed decision.
 - c. Determine that the patient is not suffering from impaired judgment due to a mental disorder. Patients with depression are not automatically excluded and it must be determined that a mental illness is interfering with decision making capacity.
 - d. Document in the patient's medical record a report of the outcome and determinations made during the mental health specialist's assessment.
 - e. Fulfill the documentation requirements (see Section 6 below).
7. Documentation requirements: All of the following must be documented in the patient's medical record:
- a. All oral requests for aid-in-dying drugs.
 - b. All written requests for aid-in-dying drugs.
 - c. The attending physician's diagnosis and prognosis, and the determination that the qualified patient has the capacity to make healthcare decisions, is acting voluntarily, and has made an informed decision, or that the attending physician has determined that the individual is not a qualified patient.
 - d. The consulting physician's diagnosis and prognosis and verification that the patient has the capacity to make health care decisions, is acting

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- voluntarily and has made an informed decision, or that the consulting physician has determined that the individual is not a qualified patient.
- e. A report of the outcome and determination made during a mental health specialist's assessment.
 - f. The attending physician's offer to the patient to withdraw or rescind his or her request at the time of the second oral request.
 - g. A note by the attending physician indicating that all requirements of the Act have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying drug prescribed.
 - h. Death Certificate: The Act provides that actions taken under the Act shall not, for any purpose, constitute suicide, assisted suicide, homicide or elder abuse. It is HOSPITAL policy that the physician reference the patient's underlying medical condition that qualified the patient for the aid-in-dying drug should be reported as the underlying cause of death.
8. Use of an Interpreter: Requirements:
- a. Option 1: The written request form signed by the patient (HOSPITAL Form X) must be written in the same language as any conversations, consultations or interpreted conversations or consultations between a patient and his or her attending or consulting physician.
 - b. Option 2: HOSPITAL Form X may be prepared in English even when the conversations or consultations were conducted in a language other than English if the interpreter completes the interpreter attestation on the form.
 - c. The interpreter must not be 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. The interpreter must meet the standards promulgated by the California Healthcare Interpreting Association or the National Council on Interpreting in Health Care or other standards deemed acceptable by CDPH. HOSPITAL will also provide its interpreters training from the California Healthcare Foundation. 2011. Web: www.chcf.org/publications/2011/11/interpreting-palliative-care-curriculum or the equivalent. Whenever practicable, HOSPITAL will provide interpreters who have received this training.

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9. Prescribing or delivering the aid-in-dying drug: After the attending physician has fulfilled his or her responsibilities under the Act, the attending physician may deliver the aid-in-dying drug in any of the following ways:
- a. Dispensing the aid-in-dying drug directly, including ancillary medication intended to minimize the patient’s discomfort, if the attending physician meets all of the following criteria:
 - i. Is authorized to dispense medicine under California law (the Act does not specify which drugs can be used as an aid-in-dying drug);
 - ii. Has a current USDEA certificate; and
 - iii. Complies with any applicable administrative rule or regulation.
 - b. With the patient’s written consent, contacting a pharmacist, informing the pharmacist of the prescription, and delivering the written prescription personally, by mail, or electronically to the pharmacist. It is not permissible to give the patient a written prescription to take to a pharmacy. The pharmacist may dispense the drug to the patient, the attending physician, or a person expressly designated by the patient. This designation may be delivered to the pharmacist in writing or verbally.
 - c. Delivery of the dispensed drug to the patient, the attending physician, or a person expressly designated by the patient may be made by personal delivery, or with a signature required on delivery, by UPS, US Postal Service, FedEx or by messenger service.
 - d. Physicians should counsel patients that leftover aid-in-dying drugs should be properly disposed of by returning to a facility authorized to dispose or as provided by the Board of Pharmacy.
10. CDPH reporting requirements: Within 30 calendar days of writing a prescription for an aid-in-dying drug, the attending physician (through HOSPITAL’s _____ Office) must submit the documents listed below to CDPH either by mail or by fax, (916) 440-5209. If mailed, the completed forms should be sent in envelopes marked “confidential” to:

CDPH Public Health Policy and Research Branch
Attention: End of Life Option Act
MS 5205
P.O. Box 997377

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Sacramento, CA 95899-7377

To protect confidentiality, CDPH has not established an email address for forms submission.

- a. A copy of the qualifying patient's written request: Request for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner (HOSPITAL Form X);
- b. The End of Life Option Act Attending Physician Checklist & Compliance form (HOSPITAL Form X);
- c. The End of Life Option Act Consulting Physician Compliance form (HOSPITAL Form X);
- d. Within 30 calendar days following the qualified patient's death from ingesting the aid-in-dying drug, or any other cause, the attending physician (through the _____ Office) must submit to CDPH the End of Life Option Act Attending Physician Follow-Up form (HOSPITAL Form X). The Act does not specify the attending physician's obligation in the event the physician does not receive this form.