END OF LIFE OPTION ACT

I. END OF LIFE OPTION ACT

A. INTRODUCTION

On Oct. 5, 2015, Governor Brown signed AB X2-15, the End of Life Option Act, which permits an adult with a terminal disease and the mental capacity to make health care decisions to request and be prescribed an aid-in-dying drug if specified conditions are met [Health and Safety Code Section 443 *et seq.*]. This document describes the requirements and options under the law.

WHEN DOES THIS LAW BECOME EFFECTIVE?

Because AB X2-15 was enacted during a special session of the California Legislature and not during the regular 2015 legislative session, the usual rules regarding its effective date do not apply. Instead, it will become effective 90 days after the special session ends. Legislative leaders have not yet decided exactly when that will occur, but it will be sometime between January 2016 and November 2016.

The effective date for AB X2-15 may also be affected by a referendum that has been filed with the California Secretary of State to repeal the End of Life Option Act. If the proponents of the referendum gather enough valid signatures to put the referendum on the ballot, the End of Life Option Act will be stayed (that is, not go into effect) until Election Day. However, the Act is not stayed while the backers of the referendum are gathering signatures or if they fail to submit enough valid signatures.

CHA will alert its members when the special session ends and when the End of Life Option Act becomes effective.

Technically, the End of Life Option Act ceases being effective on Jan. 1, 2026. However, the Legislature could take action to extend it during its 2025 session.

FIRST STEPS FOR HOSPITALS

The End of Life Option Act is not a hospital-focused law; rather, it is focused on the individual who is making the request and the physicians involved in the process. It is anticipated that most of the activities authorized under this law will happen in the doctor's office and at home — not in the hospital. However, hospitals should be aware of the law, understand how it may impact them, and develop appropriate policies.

A hospital should first decide whether it wishes to permit it employees, medical staff and others to participate in the activities authorized by the End of Life Option Act, such as writing a prescription for an aid-in-dying drug, filling such a prescription, allowing a patient to self-administer the drug in on its premises, or allowing a home health or hospice employee to prepare the drug.

If a hospital chooses to prohibit participation in such activities, it may do so. The hospital will have to adopt appropriate policies and notify employees, medical staff and contractors of such policies. The requirements for a hospital that chooses to prohibit participation are described under O. "Voluntary Participation," page 9. The hospital also may wish to address how to inform patients who inquire about the hospital's policy on this issue.

If a hospital chooses to allow participation in some or all of the activities authorized by the Act, the hospital should adopt policies addressing the various steps outlined in the End of Life Option Act. The hospital may wish to include a requirement that administration be notified if a patient plans to take an aid-in-dying drug in the facility.

DEFINITIONS

The following definitions apply to the End of Life Option Act.

"Adult" means an individual 18 years of age or older.

"Aid-in-dying drug" means a drug determined and prescribed by a physician for a qualified individual, which the qualified individual may choose to self-administer to bring about his or her death due to a terminal disease.

"Attending physician" means the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease.

"Attending physician checklist and compliance form" means a specific form created by the End of Life Option Act that identifies each and every requirement that must be fulfilled by an attending physician to be in good faith compliance with this law should the attending physician choose to participate. This form may be found at the end of this chapter as CHA Form 5-7.

"Capacity to make medical decisions" means that, in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Probate Code Section 4609, the individual 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 below) to health care providers. (Probate Code Section 4609 defines **"capacity"** as a person's ability to understand the nature and consequences of a decision and to make and communicate a decision, and includes in the case of proposed health care,

the ability to understand its significant benefits, risks, and alternatives.)

"Consulting physician" means a physician who is independent from the attending physician and who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's terminal disease.

"Health care provider" or **"provider of health care"** means:

1. Any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code. This includes physicians, nurses, psychologists, physician assistants, pharmacists, and other professionals;
2. Any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act;
3. Any person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code. This includes emergency medical technicians and paramedics; and
4. Any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. This includes general acute care hospitals, acute psychiatric hospitals, special hospitals, skilled nursing facilities, intermediate care facilities, and other facilities.

"Informed decision" means a decision by an individual with a terminal disease to request and obtain a prescription for a drug that the individual may self-administer to end the individual's life, that is based on an understanding and acknowledgment of the relevant facts, and that is made after being fully informed by the attending physician of all of the following:

1. The individual'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.
5. The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

"Medically confirmed" means the medical diagnosis and prognosis of the attending physician has been confirmed by a consulting physician who has examined the individual and the individual's relevant medical records.

"Mental health specialist assessment" means one or more consultations between an individual and a mental health specialist for the purpose of determining that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

"Mental health specialist" means a psychiatrist or a licensed psychologist.

"Physician" means a doctor of medicine or osteopathy currently licensed to practice medicine in California.

"Public place" means any street, alley, park, public building, 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.

"Qualified individual" means an adult who has the capacity to make medical decisions, is a resident of California, and has satisfied the requirements of this law in order to obtain a prescription for a drug to end his or her life.

"Self-administer" means a qualified individual's affirmative, conscious, and physical act of administering and ingesting the aid-in-dying drug to bring about his or her own death.

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

FORMS

The End of Life Option Act creates five new forms which are found at the end of this chapter:

1. "Request for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" (CHA Form 5-5);
2. "Final Attestation for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" (CHA Form 5-6);
3. "End of Life Option Act Attending Physician Checklist & Compliance Form" (CHA Form 5-7);
4. "End of Life Option Act Consulting Physician Compliance Form" (CHA Form 5-8); and
5. "End of Life Option Act Attending Physician Follow-Up Form" (CHA Form 5-9).

The Medical Board of California is permitted to update the "End of Life Option Act Attending Physician Checklist & Compliance Form," the "End of Life Option Act Consulting Physician Compliance Form," and the "End of Life Option Act Attending Physician Follow-Up Form." The California Department of Public Health (CDPH) is required to publish these forms on its website. At the time of publication of this manual, CDPH had not yet published these forms.

These forms must be used. Hospitals and physicians should not make up their own forms.

RESOURCES

The Death with Dignity National Center has resources for health care providers at www.deathwithdignity.org/learn/healthcare-providers. This website includes links to materials on other states' laws, such as Oregon, Vermont and Washington. These materials may be useful to California providers; however, it is important to keep in mind that there are important differences between these state laws and California's End of Life Option Act. See also www.ohsu.edu/xd/education/continuing-education/center-for-ethics/ethics-outreach/resources.cfm for information about the Oregon law and www.wsha.org/our-members/projects/end-of-life-care-manual for information about the Washington law. The latter website includes model hospital "allow participation" and "do not allow participation" policies that may be used as a starting point for California hospitals to develop their policies. All such policies should be reviewed by legal counsel prior to implementation.

An organization called Compassion & Choices provides physicians with free telephone consultation its physicians who are experienced in end-of-life medical care, including aid-in-dying. For more information about its physician-to-physician service, see www.compassionandchoices.org/what-we-do/doctors-to-doctors.

B. WHO CAN REQUEST AN AID-IN-DYING DRUG?

An adult with the capacity to make medical decisions and with a terminal disease may make a request to receive a prescription for an aid-in-dying drug if all of the following conditions are satisfied:

1. The individual's attending physician has diagnosed the individual with a terminal disease.
2. The individual has voluntarily expressed the wish to receive a prescription for an aid-in-dying drug.
3. The individual is a resident of California and is able to establish residency through at least one of the following means:
    a. Possession of a California driver license or other identification issued by the State of California.
    b. Registration to vote in California.
    c. Evidence that the person owns or leases property in California. This includes renting an apartment.
    d. Filing of a California tax return for the most recent tax year.
4. The individual documents his or her request by completing the form, "The Request for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" (CHA Form 5-5). The patient must also complete the "Final Attestation for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" (CHA Form 5-6) within 48 hours of self-administering the aid-in-dying drug. *(See C. "How Does a Patient Request an Aid-in-Dying Drug?," page 3, and I. "Responsibilities of the Qualified Individual," page 7.)*
5. The individual has the physical and mental ability to self-administer the aid-in-dying drug.

A request for a prescription for an aid-in-dying drug must be made solely and directly by the individual diagnosed with the terminal disease. This request cannot be made on behalf of the patient by somebody else, such as an agent under a power of attorney, an advance health care directive, a conservator, health care agent, surrogate, or any other legally recognized health care decision maker. A parent cannot request an aid-in-dying drug for his or her child. A spouse cannot request an aid-in-dying drug for the other spouse. Only the patient who has the terminal disease may request it for himself or herself. There are no exceptions to this requirement.

A person must not be considered a "qualified individual" under this law solely because of age or disability.

C. HOW DOES A PATIENT REQUEST AN AID-IN-DYING DRUG?

A person who wants a prescription for an aid-in-dying drug must submit to his or her attending physician:

1. Two oral requests that are made a minimum of 15 days apart; and
2. One written request.

The attending physician must directly receive all three requests. The requests may not be made through a designee such as an assistant in the attending physician's office. An interpreter is not considered a "designee." *(See "Requirements When an Interpreter Is Used," page 4.*)

ORAL REQUEST

As mentioned above, a person who wants a prescription for an aid-in-dying drug must make two oral requests, a minimum of 15 days apart, to his or her attending physician. The attending physician must document these requests in the patient's medical record. No special words are required in making these oral requests.

WRITTEN REQUEST

To be valid, the required written request for an aid-in-dying drug must meet all of the following conditions:

1. The patient must use the form required by the state of California. This form is titled "Request for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" and is found at the end of this chapter as CHA Form 5-5.
2. The request (the form) must be signed and dated, in the presence of two witnesses, by the patient seeking the aid-in-dying drug.
3. The request must be witnessed by at least two other adults who, in the presence of the patient, attest (by signing the form) 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.
    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.
    d. Not an individual for whom either of them is the attending physician, consulting physician, or mental health specialist. (In other words, the patient's attending physician, consulting physician, and mental health specialist cannot serve as witnesses.)

In addition, only one of the two witnesses may:

1. 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.
2. Own, operate, or be employed at a health care facility where the patient is receiving medical treatment or resides.

These limitations with respect to witnesses are independent. In other words, one witness may be related to the patient as set forth in 1. above, while the other witness owns, operates or is employed at a health facility as set forth in 2. above. But both witnesses may not fall within the same category.

REQUIREMENTS WHEN AN INTERPRETER IS USED

Generally, the written request form signed by the patient (that is, the "Request for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" (CHA Form 5-5)) 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 physicians. However, the form may be prepared in English even when the conversations or consultations or interpreted conversations or consultations were conducted in a language other than English if the English language form includes an attached interpreter's declaration, signed under penalty of perjury, that affirms that the interpreter read the "Request for an Aid-In-Dying Drugs to End My Life in a Humane and Dignified Manner" form to the patient in the target language. CHA Form 5-5 includes the required language for the interpreter's declaration.

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. The California Healthcare Interpreting Association standards are found at http://chiaonline.org/CHIA-Standards. The National Council on Interpreting in Health Care standards are found at www.ncihc.org/ethics-and-standards-of-practice. CDPH has not identified any additional standards that it deems acceptable.

D. RESPONSIBILITIES OF THE ATTENDING PHYSICIAN

The **"attending physician"** is the physician who has primary responsibility for the health care of a patient and treatment of the patient's terminal disease. The attending physician may 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.

Before prescribing an aid-in-dying drug, the attending physician must do all of the following:

1. Make the initial determination about whether the patient is qualified under the End of Life Option Act to receive an aid-in-dying drug. *(See "Initial Determination," page 5.)*
2. Confirm that the patient is making an informed decision. *(See "Confirmation that the Patient Is Making an Informed Decision," page 5.)*
3. Refer the patient to a consulting physician. *(See "Referral to a Consulting Physician," page 6.)*
4. Confirm that the patient's request does not arise from coercion or undue influence. *(See "No Coercion or Undue Influence," page 6.)*
5. Counsel the patient. *(See "Counseling the Patient," page 6.)*