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.)*

6. 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.
7. Offer the patient an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing the drug.
8. Verify, immediately before writing the prescription for an aid-in-dying drug, that the patient is making an informed decision.
9. Confirm that all requirements are met and all appropriate steps are carried out in accordance with the law before writing a prescription for an aid-in-dying drug.
10. Fulfill the documentation requirements described under J. "Documentation," page 8.
11. Complete the "End of Life Option Act Attending Physician Checklist & Compliance Form" (CHA Form 5-7). Put it and the "End of Life Option Act Consulting Physician Compliance Form" (CHA Form 5-8) in the patient's medical record. Submit both forms to CDPH. *(See K. "Physician Reporting Requirements," page 8.)*
12. Give the patient the final attestation form, "Final Attestation for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" (CHA Form 5-6), and instruct the patient about completing it.

Specific requirements of these steps are described in more detail below.

INITIAL DETERMINATION

The attending physician is required to make an initial determination of all of the following:

1. Whether the patient has the capacity to make medical decisions. **"Capacity to make medical decisions"** means that the patient has the ability to:
    a. Understand the nature and consequences of a health care decision;
    b. Understand its significant benefits, risks, and alternatives; and
    c. Make and communicate an informed decision to health care providers.

    "Informed decision" means a decision by a patient with a terminal disease to request and obtain a prescription for a drug to self-administer to end the patient'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:
    - The patient's medical diagnosis and prognosis.
    - The potential risks associated with taking the drug to be prescribed.
    - The probable result of taking the drug to be prescribed.
    - The possibility that the patient may choose not to obtain the drug, or may obtain the drug but decide not to ingest it.
    - The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

If there are indications of a mental disorder, the physician must refer the individual for a mental health specialist assessment. *(See G. "Responsibilities of the Mental Health Specialist," page 7.)* If a mental health specialist assessment referral is made, no aid-in-dying drugs may be prescribed until the mental health specialist determines that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

2. Whether the requesting adult has a terminal disease. **"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. Only a patient with a terminal disease may be prescribed an aid-in-dying drug.
3. Whether the patient is a qualified individual as described under B. "Who Can Request an Aid-in-Dying Drug?," page 3.
4. Whether the patient has voluntarily made the request for an aid-in-dying drug under this law (that is, a qualified individual who has made two oral requests at least 15 days apart and a written request using the required form, as described under C. "How Does a Patient Request an Aid-in-Dying Drug?," page 3).

CONFIRMATION THAT THE PATIENT IS MAKING AN INFORMED DECISION

The attending physician is required to confirm that the patient is making an informed decision by discussing with him or her all of the following:

1. His or her medical diagnosis and prognosis.
2. The potential risks associated with ingesting the requested aid-in-dying drug.
3. The probable result of ingesting the aid-in-dying drug.
4. The possibility that he or she may choose to obtain the aid-in-dying drug but not take it.

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

REFERRAL TO A CONSULTING PHYSICIAN

The attending physician must refer the patient to a consulting physician for medical confirmation of the diagnosis and prognosis, and for a determination that the individual has the capacity to make medical decisions and has complied with the provisions of the End of Life Option Act. A **"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 the patient's terminal disease. The law is silent regarding what is meant by "independent." It is not clear whether it is permissible for the consulting physician to be in the same medical group or on the same hospital medical staff as the attending physician. *(See F. "Responsibilities of the Consulting Physician," page 7.)*

NO COERCION OR UNDUE INFLUENCE

The attending physician must confirm that the patient's request does not arise from coercion or undue influence by another person. The physician must do this by discussing with the patient, outside of the presence of any other persons (except for an interpreter) whether or not the patient is feeling coerced or unduly influenced by another person.

COUNSELING THE PATIENT

The attending physician must counsel the patient about the importance of all of the following:

1. Having another person present when he or she ingests the aid-in-dying drug.
2. Not ingesting the aid-in-dying drug in a public place. **"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.
3. 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.
4. Participating in a hospice program.
5. Maintaining the aid-in-dying drug in a safe and secure location until the patient takes it.

The attending physician must also:

1. 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.
2. Offer the patient an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing it. The attending physician himself or herself must give the patient this opportunity directly, not through a designee.
3. Verify, immediately before writing the prescription, that the patient is making an informed decision *(see . "Definitions," page 1, for the definition of an informed decision)*.
4. Confirm that all requirements are met and all appropriate steps are carried out in accordance with the End of Life Option Act before writing a prescription for an aid-in-dying drug.
5. Complete all documentation and reporting requirements *(see J. "Documentation," page 8, and K. "Physician Reporting Requirements," page 8)*.
6. Give the patient the "Final Attestation for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" form (CHA Form 5-6), with the instruction that the form be filled out and executed by the patient within 48 hours prior to self-administering the aid-in-dying drug.

E. PRESCRIBING OR DELIVERING THE AID-IN-DYING DRUG

After the attending physician has fulfilled his or her responsibilities described under D. "Responsibilities of the Attending Physician," page 4, the attending physician may deliver the aid-in-dying drug in any of the following ways:

1. 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:
    a. Is authorized to dispense medicine under California law.
    b. Has a current United States Drug Enforcement Administration (USDEA) certificate.
    c. Complies with any applicable administrative rule or regulation.
2. With the patient's *written* consent, contacting a pharmacist, informing the pharmacist of the prescriptions, and delivering the written prescriptions personally, by mail, or electronically to the pharmacist. Note that the patient's consent must be in writing. 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.

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 United Parcel Service, United States Postal Service, Federal Express, or by messenger service.

It is not permissible to give the patient a written prescription to take to a pharmacy.

F. RESPONSIBILITIES OF THE CONSULTING PHYSICIAN

Before a patient obtains an aid-in-dying drug from his or her attending physician, the patient must be examined by a consulting physician. A **"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 the patient's terminal disease. The consulting 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.

The law is silent regarding what is meant by "independent." It is not clear whether it is permissible for the consulting physician to be in the same medical group or on the same hospital medical staff as the attending physician. CHA will provide additional guidance when it becomes available. Until then, if a hospital chooses to allow its medical staff to participate in activities under the End of Life Option Act, the hospital should develop a policy regarding the requirements a consulting physician must meet to be considered independent.

A physician who chooses to act as a consulting physician under the End of Life Option Act must do all of the following:

1. Examine the individual and his or her relevant medical records.
2. Confirm in writing the attending physician's diagnosis and prognosis.
3. Determine that the individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision.
4. If there are indications of a mental disorder, refer the individual for a mental health specialist assessment *(see G. "Responsibilities of the Mental Health Specialist," page 7)*.
5. Fulfill the documentation requirements described under J. "Documentation," page 8.
6. Complete the state-mandated form titled "End of Life Option Act Consulting Physician Compliance Form" (CHA Form 5-8) found at the end of this chapter and submit it to the attending physician.

G. RESPONSIBILITIES OF THE MENTAL HEALTH SPECIALIST

There is no requirement for a patient to be examined by a mental health specialist prior to obtaining an aid-in-dying drug from his or her attending physician. However, the attending physician or consulting physician may, at their option, require a consultation by a mental health specialist. For purposes of this law, a **"mental health specialist"** means a psychiatrist or a licensed psychologist. The mental health specialist 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.

A psychiatrist or psychologist who chooses to act as a mental health specialist under the End of Life Option Act must do all of the following:

1. Examine the qualified individual and his or her relevant medical records.
2. Determine that the individual has the mental capacity to make medical decisions, act voluntarily, and make an informed decision.
3. Determine that the individual is not suffering from impaired judgment due to a mental disorder.
4. Fulfill the documentation requirements described under J. "Documentation," page 8 (that is, write a report of the outcome and determinations made during the mental health specialist's assessment). (**NOTE:** A **"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.)

H. OPPORTUNITY FOR PATIENT TO CHANGE HIS OR HER MIND

A patient may withdraw or rescind his or her request for an aid-in-dying drug at any time. A patient may decide not to ingest an aid-in-dying drug at any time. The patient has the right to change his or her mind without regard to his or her mental state. In other words, if a patient makes a request for an aid-in-dying drug while having the 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.

I. RESPONSIBILITIES OF THE QUALIFIED INDIVIDUAL

Within 48 hours prior to self-administering the aid-in-dying drug, the patient is required to complete the form titled "Final Attestation for an Aid-in-Dying Drug to End My Life in a Humane and Dignified Manner" (CHA Form 5-6), found at the end of this chapter. The law seems to expect that someone — perhaps the patient or perhaps a family member — will give this form to the attending physician.