

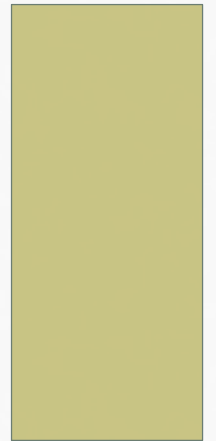
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End of Life Option Act: Medical Legal
Considerations.

No relevant financial relationships in the past twelve
months by presenter or spouse/partner.

UCDMC END OF LIFE OPTION POLICY

SEPTEMBER 2016
UCDHS LEGAL AFFAIRS



END OF LIFE OPTION ACT

- Effective June 9, 2016
- Authorizes qualified terminally ill patients to request a drug prescription from their attending physician that will end the patient's life
- Providers: individual and institutional participation in activities under the End of Life Option Act is completely voluntary
- Ingesting aid-in-dying drug is not suicide and will not affect a life, health, or annuity policy

NON-PARTICIPATING PROVIDERS

- Voluntary: Provider who elects not to participate is not required to take any action in support of the patient's decision
 - A health care provider may decline to inform a patient about his/her rights under the End of Life Option Act
 - A health care provider is not required to refer a patient to a physician who will participate, but must provide medical records to patient who transfers care
- Provider may not be disciplined or subject to liability for refusing to participate in any way

PROHIBITING PROVIDERS

- Providers can prohibit employees, independent contractors, other providers (such as physicians on the medical staff), and others from participating:
 - On premises owned, managed or under direct control of the prohibiting provider (clinics, pharmacies, medical office buildings, etc.)
 - While acting within course/scope of employment by, or contract with, prohibiting provider

PROHIBITING PROVIDERS

- Cannot prohibit:
 1. Diagnosing whether patient has terminal disease, informing patient of prognosis, determining capacity
 2. Providing information to patient about End of Life Option Act
 3. Upon patient request, referring to another provider who will participate

PROHIBITING PROVIDERS

- If a hospital/provider wishes to prevent employees, contractors, or others from participating, must provide written notice:
 - Notice must be a separate statement advising recipient of the prohibiting provider's policy with respect to participating in activities under the End of Life Option Act
 - If proper notice given, may impose discipline or other permitted sanctions

QUALIFIED PATIENTS

- Adult (18 years or older)
- Resident of California (driver's license, voter id, CA tax return)
- Have a **terminal disease**
- Have the **mental capacity** to make medical decisions
- Have the physical ability to **self-administer** the drug

TERMINAL DISEASE

“ An **incurable** and **irreversible** disease that has been medically confirmed and will, within reasonable medical judgment, **result in death within six months**”

MENTAL CAPACITY

- Understands nature and consequences of decision*;
- Understands significant benefits, risks, and alternatives;
- Has ability to make and communicate informed decision to physician

**If there is any indication of a mental disorder, a mental health assessment is required

SELF-ADMINISTER

- The affirmative, conscious, and physical act of administering and ingesting the aid-inducing drug to bring about his/her own death

PATIENT REQUEST

- Patient request
 - **Two oral requests** made a minimum of **15 days apart**
AND
 - **One written request** on a specific state-issued form ("Patient Request Form"), signed and dated by **two witnesses**.
 - Must be made directly to attending physician, not through a designee, surrogate, or through an advance directive or other document.

THE ATTENDING PHYSICIAN

- “The physician who has the **primary responsibility for the health care and treatment** of the patient’s terminal disease”
- Must not be a relative (by blood, marriage, registered domestic partnership, adoption) or entitled to a portion of the patient’s estate upon death

INITIAL RESPONSIBILITIES OF THE ATTENDING PHYSICIAN

- The attending physician must initially determine that:
 - Patient's illness is **terminal**
 - Patient has **capacity** to make medical decisions
 - Patient's request was **voluntary**
 - Patient is **qualified**

RESPONSIBILITIES OF ATTENDING PHYSICIAN (CONT.)

- Attending physician must fully inform the patient of:
 - Diagnosis and prognosis
 - Potential risks associated with taking drug
 - Probable result of taking drug
 - Possibility that patient may choose not to obtain the drug or may obtain it but decide not to take it
 - Feasible alternatives or additional treatment opportunities, including comfort care, hospice care, palliative care, and pain control

RESPONSIBILITIES OF ATTENDING PHYSICIAN (CONT.)

Attending physician must also:

- Refer patient to consulting physician for confirmation of diagnosis and prognosis, decision making capacity, determination that patient is acting voluntarily, and has made an informed decision
- Refer patient to mental health specialist if there are indications of mental disorder
- Counsel patient about the importance of:
 - Having another person present during ingestion of drug
 - Not ingesting drug in public place
 - Notifying next of kin of request for drug (patient may decline)
 - Participating in hospice program
 - Keeping drug in safe and secure location

RESPONSIBILITIES OF ATTENDING PHYSICIAN (CONT.)

- Attending physician must also:
 - At the time of the patient's second oral request, inform the patient he/she can withdraw request at any time
 - Offer patient opportunity to withdraw request before prescribing drug
 - Verify, immediately before writing prescription, that the patient is making informed decision
 - Confirm all legal requirements are met before writing the prescription
 - Complete " Attending Physician Checklist and Compliance Form"
 - Give patient "Final Attestation" form

CONSULTING PHYSICIAN

- “ 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.”
- May not be a relative or entitled to a portion of the patient’s estate upon death

RESPONSIBILITIES OF CONSULTING PHYSICIAN

- Examine patient and medical records
- Confirm in writing attending physician's diagnosis and prognosis
- Determine patient has capacity to make medical decisions, is acting voluntarily, and is making informed decision
- Refer to mental health specialist if indications of mental disorder
- Comply with record documentation requirements
- Submit "Consulting Physician Compliance Form" to attending physician

MENTAL HEALTH SPECIALISTS

- “If there are indications of a mental disorder, the physician shall refer the individual for a mental health specialist assessment.”
- Must be by a psychiatrist or licensed psychologist
- Not a relative or entitled to a portion of the patient’s estate upon death
- Consult is optional – made at discretion of attending and consulting physicians

RESPONSIBILITIES OF MENTAL HEALTH SPECIALIST

- Examine patient and relevant medical records
- Determine patient has capacity to make medical decisions, is acting voluntarily, and is making informed decision
- Determine that patient is not suffering from impaired judgment due to a mental disorder
- Comply with record documentation requirements

RESPONSIBILITY OF THE PATIENT

- Complete “Final Attestation Form” prior to ingestion
- Arrange that form be delivered to attending physician
- Not ingest drug in public place (self-administration in a private place with witness)
- Arrange for disposal of unused drugs

ATTENDING PHYSICIAN REPORTING REQUIREMENTS

- Within 30 days of writing prescription, submit to CDPH:
 1. Copy of patient's written request
 2. "Attending Physician Checklist & Compliance Form"
 3. "Consulting Physician Compliance Form"
- Within 30 days of patient's death (from any cause), submit to CDPH:

Attending Physician Follow-Up Form"