

California Hospice Legal and Policy FAQ

Frequently asked questions on medical aid in dying and hospice compliance

1. May hospice attending physicians serve as a prescriber for medical aid in dying in compliance with federal and state law?

YES. A hospice attending physician in California can serve as a prescriber in medical aid in dying when they meet the criteria for an attending physician. A provider is an attending physician when he/she (A) Is authorized to dispense medicine under California law, (B) Has a current United States Drug Enforcement Administration (USDEA) certificate, and (C) Complies with any applicable administrative rule or regulation. Cal. Health & Safety Code § 443.5(b)(1).

2. May a hospice attending physician serve as the consulting physician in medical aid in dying?

YES. A hospice attending physician may serve as a consulting provider in medical aid in dying under California law, provided they meet the requirements of a consulting provider. Under California law, the End of Life Option Act defines a consulting provider as one who is independent from the attending physician and is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's terminal disease. Cal. Health & Safety Code § 443.1.



3. May a hospice attending physician take custody of aid in dying medication from the pharmacy on behalf of the patient?

No. Pursuant to chain of custody requirements for controlled substances under the Federal Drug Enforcement Administration (DEA), prescribers may not take custody of the aid in dying medication at any time and doing so may expose them to severe civil and even criminal penalties. Although certain state laws may reference prescribing physicians taking custody of the aid in dying medications from the pharmacy, federal DEA regulations preempt any contrary state laws. The DEA has a strict system for tracking the chain of custody of controlled substances between registered entities, and generally prohibits the distribution of controlled substances from one Practitioner to another outside of a few specific circumstances. The DEA's tracking system does not track controlled substances once dispensed to a patient or patient representative. Also, note that the Controlled Substances Act and regulations are clear that Practitioners may not dispose of controlled substances without a specific registration to expressly allow it so neither the pharmacy nor any of the Prescribers should ever be in the chain of custody for unused medications.

4. May a hospice involuntarily discharge a patient for seeking information about medical aid in dying or seeking a prescription for medical aid in dying?

No. California Health & Safety Code § 1599.1 establishes that residents of hospice facilities have the right to appeal an involuntary transfer or discharge through the appeal process provided under federal regulations (42 C.F.R. § 483.204).

5. Must a hospice prohibit its clinical staff from pronouncing death, certifying the cause of death, or signing a death certificate for a participant who utilizes medical aid in dying?

No. Nothing in Medicare hospice regulations or the Assisted Suicide Funding Restriction Act requires hospices to prohibit clinical staff from pronouncing death, certifying the cause of death, or signing a death certificate for a participant who utilizes medical aid in dying. Further, doing so may be required under applicable state hospice regulations.

6. May hospice employees be physically present in the patient’s room at the point of ingestion in compliance with federal and state law?

YES. California’s End of Life Option Act explicitly states that persons can be present when a qualified individual self-administers the prescribed aid in dying drug. Further, these persons present at the time of ingestion will not be subject to civil or criminal liability for their presence. Cal. Health & Safety Code § 443.14(a), (c). California’s End of Life Option Act does not require hospice programs to prohibit their employees from being present when a patient ingests the aid in dying drug. Cal. Health & Safety Code § 443.5(5).

7. May hospice employees assist in preparing the aid in dying medication in compliance with federal and state law?

YES. Pursuant to Section 443.14, an individual “present” when the qualified individual self-administers is protected from civil and/or criminal liability and may assist by preparing the aid-in-dying medication so long as they do not assist ingestion of the medication. Additionally, a health care provider, entity, or professional organization may not “subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating in good faith compliance with the law.” Cal. Health & Safety Code § 443.14(a)–(b).

8. Are hospice programs required to report medical aid in dying as suicide under elder abuse statutes?

No. Pursuant to Section 443.18, death resulting from the self-administration of an aid-in-dying drug is not suicide. Cal. Health & Safety Code § 443.13(a).

9. Are hospice programs required to refer patients who ask about medical aid in dying for a psychiatric evaluation?

YES. “Before prescribing an aid-in-dying drug, the attending physician shall do all of the following: (1) Make the initial determination of all of the following: (A)(i) Whether the requesting adult has the capacity to make medical decisions. (ii) If there are indications of a mental disorder, the physician shall refer the individual for a mental health specialist assessment. (iii) If a mental health specialist assessment referral is made, no aid-in-dying drugs shall 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.” Cal. Health & Safety Code § 443.5.(a).



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