



Colorado 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 Colorado can serve as a prescriber in medical aid in dying when they meet the criteria for an attending physician. An attending physician is one who has primary responsibility for the care of a terminally ill individual and the treatment of the individual's terminal illness. Colo. Rev. Stat. Ann. § 25-48-102(2).

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 physician in medical aid in dying under Colorado law, provided they meet the requirements of a consulting physician. Under the Colorado End-of-Life Options Act, a consulting physician is one who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a terminally ill individual's illness. Colo. Rev. Stat. Ann. § 25-48-102(3).

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. The Colorado Administrative Code mirrors the federal rules on discharge of a hospice patient. 10 Colo. Code Regs. § 2505-10:8.550(7)(A).

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. The End-of-Life Options Act does not require hospice programs to prohibit hospice employees from being present at time of ingestion of medical aid in dying medication. That said, the statute requires attending providers to educate the individual about the importance of having another person present when the individual self-administers the medical aid-in-dying medication. Colo. Rev. Stat. Ann. § 25-48-106(1)(h)(I).

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

Yes. “A person is not subject to civil or criminal liability or professional disciplinary action for acting in good faith under this article, which includes being present when a qualified individual self-administers the prescribed medical aid-in-dying medication” and “a health care provider, professional organization or association may not subject an individual to censure, discipline, suspension, loss of license, privileges, or membership, or any other penalty.” Colo. Rev. Stat. Ann. § 25-48-116(1)–(2).

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

No. “...do not, for any purpose, constitute suicide, assisted suicide, mercy killing, homicide, or elder abuse under the “Colorado Criminal Code”...” Colo. Rev. Stat. Ann. § 25-48-121.



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

No. Per Sec. 25-48-108, “If the attending physician or the consulting physician believes that the individual may not be mentally capable of making an informed decision, the attending physician or consulting physician shall refer the individual to a licensed mental health professional for a determination of whether the individual is mentally capable and making an informed decision.”

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