



## Delaware 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 Delaware can serve as a prescriber in medical aid in dying so long as he/she meets the criteria for an “attending physician.” An attending physician is designated by an individual to have primary responsibility for the individual’s terminal illness. However, the attending physician cannot provide treatment that is limited to or primarily comprised of prescribing or dispensing end of life medication. 16 Del. Code Ann. § 2502C.

### **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 Delaware law, so long as they meet the state’s requirements. A consulting physician is a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual’s terminal illness and is not designated by an individual to have primary responsibility for the individual’s health care. 16 D.C. Code § 2502C(5). Note, this role may also be executed by a consulting APRN. 16 D.C. Code § 2502C(11).

### **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.** Hospices in Delaware do not have explicit grounds to discharge a patient solely for seeking information about medical aid in dying or requesting a prescription for such medication. Relatedly, Delaware requires hospice programs to develop written policies pertaining to criteria for discharge from hospice programs and written policies regarding the rights and responsibilities of patients. 16 Del. Admin. Code 3380-5.0(5.1.9),(5.5).

### **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.** Delaware does not require hospice programs to prohibit hospice employees from being present at time of ingestion of medical aid in dying medication. The law does however require attending physicians to educate the individual about the importance of having another person present when the individual self-administers the medical aid-in-dying medication. Del. Laws ch. 35C § 2508C.(8)(b).

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

**YES.** Pursuant to Section 2613C, a person acting in good faith and following accepted health-care standards is protected from liability or disciplinary actions for being present during, prescribing, dispensing, refusing to prescribe, or providing accurate information about medication used to legally end a patient’s life. Del. Laws ch. 35C § 2513C(a).

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

**No.** A request or prescription for or the dispensing of medication under this Act does not constitute elder abuse, suicide, assisted-suicide, homicide, or euthanasia. 16 Del. Code Ann. § 2512C.

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

**No.** Delaware requires that “individual must be evaluated by a psychiatrist or a psychologist if either the attending or consulting physicians or APRNs are concerned that the individual lacks decision-making capacity.” 16 Del. Code Ann. § 2502C.

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