

Hawaii 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. Hospice attending physicians may serve as prescribers for medical aid in dying in compliance with federal and state law, provided they meet the requirements outlined in Hawaii's "Our Care, Our Choice Act." A hospice provider is an attending provider when the physician licensed pursuant to chapter 453 or an advanced practice registered nurse licensed pursuant to chapter 457 has responsibility for the care of the patient and treatment of the patient's terminal disease. Haw. Rev. Stat § 327L-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 physician in medical aid in dying under Hawaii law, provided they meet the requirements of a consulting physician. Under the Our Care, Our Choice Act, a "consulting provider" means a physician licensed pursuant to chapter 453 who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease or advanced practice registered nurse licensed pursuant to chapter 457 who is qualified by specialty or experience to diagnose and prescribe medication. Haw. Rev. Stat § 327L-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.

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.

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

YES. Hawaii does not require hospice programs to prohibit hospice employees from being present at time of ingestion of medical aid in dying medication. Also, the attending provider is required to counsel the patient about the importance of having another person present when the patient self-administers the medication and to ensure that the patient does not self-administer the medication in a public place. Haw. Rev. Stat § 327L-4(a)(7).



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

Yes. A person “shall not be subject to civil or criminal liability or professional disciplinary action for participating or acting in good faith compliance with the law, including being present when a qualified patient self-administers the prescribed medication” and no professional organization, association, health care provider, or health care facility may “subject any person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance.” Haw. Rev. Stat § 327L-19(1)–(2).

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

No. Nothing in this chapter shall be construed to authorize a health care provider, health care facility, or any other person to end a patient’s life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, murder, manslaughter, negligent homicide, or any other criminal conduct under the law. Haw. Rev. Stat § 327L-18(a).

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

No. The attending provider shall refer the patient for counseling. No medication to end a patient’s life pursuant to this chapter shall be prescribed until the person performing the counseling determines that the patient is capable, and does not appear to be suffering from undertreatment or nontreatment of depression or other conditions which may interfere with the patient’s ability to make an informed decision pursuant to this chapter. Haw. Rev. Stat § 327L-6.

This material is provided for informational purposes only and does not constitute legal advice. Readers should consult their own attorneys regarding the application of any legal or regulatory requirements to their specific circumstances. This material was developed in partnership with outside counsel, Epstein Becker & Green, P.C.