



## Maine 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 the Maine Death with Dignity Act (22 M.R.S.A. § 2140), as an attending physician. An attending physician is one who “has primary responsibility for the care of a patient and the treatment of that patient’s terminal disease.” 22 M.R.S.A. § 2140(2)(C).

### 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 Maine law, provided they meet the requirements of a consulting physician. “Consulting physician” means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a patient’s disease. 22 M.R.S.A. § 2140(2)(D).

### 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 Maine Death with Dignity Act does not explicitly permit a hospice to discharge a patient solely for seeking such information or prescriptions. The statute provides each patient with the right to “information regarding all treatment options reasonably available for the care of the patient,” which includes medical aid in dying. 22 M.R.S.A. § 2140(3).

**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.** Maine does not require hospice programs to prohibit hospice employees from being present at time of ingestion of medical aid in dying medication. Moreover, state law 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. 22 M.R.S.A. § 2140.

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

**Yes.** While Maine’s Death with Dignity Act does not include an explicit “good faith” clause or an express authorization for hospice employees to assist in the preparation of medical aid in dying medication, the statute also does not have an explicit prohibition against hospice employees assisting in the preparation of aid in dying medication. Pursuant to Section 22, there is no prohibition against an employee of a health care provider participating in activities under this Act, including delivering the prescription for, dispensing or delivering the dispensed medication, or being present when the qualified patient takes the medication prescribed. 22 M.R.S.A. §§ 2140(22)(D); 2140(22)(G).



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

**No.** Actions taken in accordance with this Act do not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide under the law. A patient's death certificate must list the underlying terminal disease as the cause of death. 22 M.R.S.A. 2140(20).

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

**No.** If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, the physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner may not be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. 22 M.R.S.A. 2140(8).

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