



## **New Mexico 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.** Under the End-of-Life Options Act, a “prescribing health care provider” is defined as a physician, osteopathic physician, nurse licensed in advance practice, or physician assistant authorized to prescribe medication. See NM Stat § 24-7C-2(D), (G). As physicians, hospice attending physicians meet the criteria to serve as prescribers.

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

**YES.** In New Mexico, a hospice attending physician may act as the consulting physician if they are licensed under the relevant medical acts and fulfill statutory requirements. New Mexico’s statutes explicitly highlight hospice providers are potential consulting physicians. Section 24-7C-3 states that a prescribing health care provider may provide a prescription for medical aid in dying medication after confirming that at least one physician has determined, after an appropriate examination, that the individual has capacity, a terminal illness and the ability to self-administer the medication. That physician may be the prescribing health care provider, the individual’s hospice health care provider, or another qualifying physician.



**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.** State law does not authorize involuntary discharge of a patient for seeking information or a prescription for medical aid in dying. A hospice may refuse to participate in medical aid in dying and transfer to another provider if the hospice/provider objects for reasons of conscience.

**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.** New Mexico 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 hospice or hospice employee may invoke a conscience-based refusal to being present at time of ingestion. NM Stat § 24-7C-7(A). If a hospice employee refuses to be present based on conscience beliefs, New Mexico protects them from criminal liability, licensing sanctions or other professional disciplinary action.

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

**Yes.** Pursuant to Section 24-7C-7, a person will not be subject to criminal liability, licensing sanctions, or other professionally disciplinary action for (1) participating in medical aid in dying in good faith compliance with the End of Life Options Act, (2) being present when a qualified patient administers the prescribed medical aid in dying medication, and (3) refusing to participate in medical aid in dying in any way. NM Stat § 24-7C-7.

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

**No.** Nothing in the End-of-Life Options Act shall be construed to authorize a physician or any other person to end an individual's life by lethal injection, mercy killing or euthanasia. Actions taken in accordance with the End-of-Life Options Act shall not be construed, for any purpose, to constitute suicide, assisted suicide, euthanasia, mercy killing, homicide or adult abuse under the law. NM Stat § 24-7C-8.

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

**No.** If an individual has a recent history of a mental health disorder or an intellectual disability that could cause impaired judgment with regard to end-of-life medical decision making, or if, in the opinion of the prescribing or consulting health care provider, an individual currently has such a disorder, the individual shall not be determined to have capacity until a mental health professional evaluates and determines the individual to have capacity. NM Stat § 24-7C-4 (2024).



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