

Oregon 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 Oregon law, provided they meet the requirements set forth under the Oregon Death with Dignity Act (herein “Act”). Under the Act, an attending physician is “the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.” [ORS 127.800 §1.01\(2\)](#).

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

YES. Under the Oregon Revised Statute’s Death with Dignity Act, a hospice attending physician may serve as a consulting physician if the meet its requirements. The Act defines a consulting physician as a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease. [O.R.S. 127.800 §1.01\(4\)](#).

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 aide in dying?

N/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 Oregon Death with Dignity Act does not require hospice programs to prohibit hospice employees from being present at time of ingestion of medical aid in dying medication. Moreover, employees are protected from civil or criminal liability or professional disciplinary action for being present when a qualified patient takes prescribed medication to end their life. ORS 127.885(1). Additionally, the statute requires attending physicians to counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant. [ORS 127.815 §3.01\(1\)\(f\)](#).

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

Yes. Pursuant to Section 4.01, no person shall be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with Oregon's Death with Dignity Act, including being present when the patient takes the prescribed aid in dying medication, and no professional organization, association, or health care provider can subject that a 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 with the Act. [O.R.S. 127.885 §4.01\(1\)-\(2\)](#).

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

No. Nothing in ORS 127.800 to 127.897 shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with ORS 127.800 to 127.897 shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law. [1995 c.3 §3.14]. [O.R.S. 127.880 §3.14.C](#).

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

No. Under [ORS 127.815](#), “The attending physician shall[] refer the patient for counseling if appropriate pursuant to [ORS 127.825 \(§3.03. Counseling referral\)](#)[.]”

Under, [ORS 127.825](#), “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, either physician shall refer the patient for counseling. No medication to end a patient’s life in a humane and dignified manner shall 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.”

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