



General Hospice Legal and Policy FAQ

Frequently asked questions on medical aid in dying and hospice compliance

1. May hospice staff provide information about medical aid in dying when patients express interest in controlling when their life ends, even when patients do so without using precise or legal language?

YES. There is nothing in federal law or in the statutory frameworks governing medical aid in dying (MAID) that prohibits bedside hospice staff from providing truthful, non directive information when patients express interest in controlling when their life ends using indirect or non statutory language. Responding to such expressions with accurate information about what MAID is and whether it is legally available in the patient's state is consistent with standard goals of care communication and informed consent principles and does not itself constitute formal participation in the MAID process.

2. May hospice attending physicians serve as a prescriber for medical aid in dying in compliance with federal and state law?

YES. Federal law does not prohibit hospice attending physicians from serving as prescribers for medical aid in dying. Additionally, under applicable state laws, hospice attending physicians may serve as prescribers for medical aid in dying, provided the hospice attending physicians comply with the requirements of the End of Life Option Act and other relevant statutes and regulations, such as the Assisted Suicide Funding Restriction Act. In the following states where medical aid in dying is legal, hospice attending physicians can serve as prescribers under the specified requirements.

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

YES. Contingent upon compliance with state laws, hospice attending physicians may serve as the consulting physician in medical aid in dying. Funding for hospice physician time in performing these functions must adhere to the federal Assisted Suicide Funding Restriction Act.

Below, find the specific requirements within states where medical aid in dying is permitted.



4. 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. 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. CMS prohibits a hospice from involuntarily discharging a patient for seeking information about medical aid in dying or seeking a prescription for medical aid in dying. According to 42 CFR 418.26, a hospice may only discharge a patient if: (1) they move out of the hospice's service area or transfers to another hospice, (2) it's determined that the patient is no longer terminally ill, or (3) they are disruptive, abusive, or uncooperative to the extent that hospice staff's ability to effectively give care is seriously impaired. These federal regulations apply to all Medicare hospice programs and are conditions of participation in the Medicare program.

6. 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.

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

YES. Hospice employees may be physically present in the patient’s room at the point of ingestion in compliance with federal and state laws. Federal and state laws do not require hospice programs to prohibit hospice employees from being present during ingestion of the medical aid in dying medication. Prohibiting employees from being present does not reduce a hospice’s regulatory risk.

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

Yes. Nothing in Medicare hospice regulations or the Assisted Suicide Funding Restriction Act requires hospices to prohibit clinical staff from assisting in preparing the aid in dying medication for a participant who utilizes medical aid in dying. Some states like California specifically include statutory language protecting individuals who assist in the preparation of the medication from civil and/or criminal liability while other states protect individuals acting in good faith under the state’s End of Life Options Act.

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

No. Aid in dying is not suicide under state law. The cause of death is the terminal condition.

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

No, not unless the prescribing clinician or clinical staff of the hospice determines that the patient meets the requirement for a psychiatric evaluation under the aid in dying law for a question of competency.



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