



End of Life Option Act

What is the End of Life Option Act?

This is a California law that will allow a terminally ill patient to request a drug from their physician that will end the patient's life. Patients who choose to end their lives this way, and who carefully follow the steps in the law, will not be considered to have committed suicide. Physicians who help their patients with this process, and who carefully follow the steps in the law, will be providing a new, legal form of end-of-life care and will not be subject to legal liability or professional sanction for doing so.

This end-of-life option is voluntary for both patients and their physicians.

Who can use this option?

To receive the aid-in-dying drug, a patient must be 18 or older and a resident of California. The patient must also:

- Have a terminal disease. A physician must determine that the disease cannot be cured or reversed and is expected to result in death within 6 months.
- Have the capacity to make medical decisions.
- Not have impaired judgment due to a mental disorder (Not all people with mental disorders have impaired judgment.)
- Have the ability, physically and mentally, to take the drug at the time they want to take it.

Patients cannot request aid in dying in advance directives or Physician Orders for Life Sustaining Treatment (POLSTs). Healthcare agents, surrogates, and conservators cannot request aid in dying for a patient, even if they know that is what the patient would have wanted.

How does a patient obtain aid in dying?

If a patient wishes to receive the aid-in-dying drug, the patient and their physician must follow the steps in the law carefully. Below is a summary of key steps but not a comprehensive list:

- The patient's attending physician (the physician primarily responsible for their illness) must decide that the patient's illness is terminal, meaning it cannot be cured or reversed and the patient will likely die in six months or less. The physician must also determine that the patient has capacity to make medical decisions.
- The patient must make two oral requests, a minimum of 48 hours apart, and a written request directly to their attending physician. The written request must be on a special form that is witnessed and signed by the patient. The patient must discuss this decision with his or her physician without anyone else present (except an interpreter, if needed), to make sure the decision is voluntary.
- The patient must then see a second physician (a consulting physician) who can confirm the patient's diagnosis, prognosis, and ability to make medical decisions. If either physician thinks the patient might have a mental disorder affecting their judgment about this decision, the patient must also see a mental health specialist.
- The patient and physician must discuss all of the following:
 - How the aid-in-dying drug will affect the patient, and the fact that death might not come immediately.
 - Realistic alternatives to taking the drug, such as comfort care, hospice care, palliative care, and pain control.
 - Whether the patient wants to withdraw the request.
 - Whether the patient will notify next of kin, have someone else present when taking the drug, or participate in a hospice program. The patient is not required to do any of these things.
 - Ensure the patient knows they do not have to take the drug, even once they have filled the prescription.
- If the patient still wishes, the physician will write a prescription for the drug.

Do patients have to take the drug they requested?

No. If the patient has received the drug, they can take it whenever they want, or not take it at all. Taking the drug is the patient's choice alone. The patient must take the drug himself/herself/themselves. Others can help prepare the drug and sit with the patient, but the patient must be the one to physically take it.

Do doctors have to give patients aid in dying if they ask for it?

No. A physician's participation is voluntary. In addition, entire facilities (such as hospitals or nursing homes) can decide not to participate in aid in dying and can prohibit employees and contractors from doing so as well. However, physicians or facilities who do not participate in aid in dying can't prevent someone from referring patients to a physician who does participate. Doctors who decline to prescribe the drugs are obliged to document the date of the patient's request and transfer the record to any other doctor that the patient chooses. Since the law requires the patient's "attending physician" to be the person that helps the patient with aid in dying, patients should learn about physician or facility policies when choosing who provides their care, if this is important to them. The law requires health care facilities to post their end-of-life policy publicly and also requires physicians to tell patients if they do not provide this form of care.

How does the law protect patients from being pressured to end their lives?

The Act contains a number of protections for patients:

- Two witnesses must be present when the patient signs the written request form. The witnesses sign the request form if they agree that the patient has the mental ability to make decisions and is voluntarily asking for aid in dying.
- At least one of the witnesses must be unrelated to the patient or not entitled to inherit part of the patient's estate. At least one of the witnesses must be someone who does not work for the facility where the patient is receiving care. A physician who is treating or diagnosing the patient cannot be a witness.
- The physician who provides in aid in dying to a patient cannot be related to that patient or eligible to inherit from that patient.
- It is a serious crime for anyone to try to force a patient to request or take aid-in-dying drugs.
- Patients can change their minds and take back their request for the drug at any time, regardless of their mental state.
- An interpreter who helps the patient get aid in dying cannot be related to the patient or be eligible to inherit from that patient.
- The law does not allow someone to end a patient's life by lethal injection, mercy killing, or active euthanasia. Those actions are still illegal in California.

How does the Act affect a patient's insurance, wills or other contracts?

The Act protects patients from feeling financial or other pressure to end their lives by placing restrictions on what insurance companies and others can do. Patients can never be denied life or health insurance or annuities based on requesting or taking an aid-in-dying drug. A health insurer cannot tell a patient that aid in dying is covered unless the patient asks. A health insurer also cannot refuse treatment for the illness at the same time it offers coverage for aid in dying. Finally, a will, contract, or other agreement cannot require a patient to receive aid in dying or prevent them from doing so.

This document provides only information about the law and does not constitute legal advice. We recommend that you seek the advice of a lawyer for specific questions about your situation. Last updated May 2022.

Prepared by:

UCSF/UC HASTINGS CONSORTIUM
ON LAW, SCIENCE, & HEALTH POLICY



UC HASTINGS
COLLEGE OF THE LAW