




## MEMORANDUM

DATE	June 12, 2015
TO	Board of Psychology Members
FROM	 Jonathan Burke Administrative Services Coordinator
SUBJECT	<b>SB 128 (Wolk) – End of life: - Watch</b>

### **Background:**

Please see attached analysis for detail on the proposed legislation.

### **Action Requested:**

The staff recommendation is to “watch” SB 128 (Wolk).

**Attachment A** is the staff analysis of SB 128.

**Attachment B** is the language of the bill.

# CALIFORNIA STATE BOARD OF PSYCHOLOGY

## BILL ANALYSIS

---

**BILL NUMBER:** SB 128                      **VERSION:** AMENDED IN SENATE JUNE 1, 2015

**AUTHOR:** WOLK & MONNING              **SPONSOR:** AUTHORS

**RECOMMENDED POSITION:** WATCH

**SUBJECT:** END OF LIFE

---

**Overview:** This bill would establish the End of Life Option Act in California, modeled after Oregon's Death with Dignity Act that was enacted in 1997. This would allow a mentally competent, terminally ill adult in California in the final stages of their disease to request medication from a physician to assist suicide.

### **Current Law:**

- 1) Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony. (Penal Code (PC) § 401)
- 2) Provides that a competent adult has a fundamental right to accept or reject medical treatment, including the right to withdraw or withhold life-sustaining treatment that may cause or hasten the individual's death. (See e.g., Cruzan v. Director, Missouri Dept. of Health (1990) 497 U.S. 261; Thor v. Superior Court (1993) 5 Cal.4th 725; Cobbs v. Grant (1970) 8 Cal.3d 229.)
- 3) Authorizes, under the Natural Death Act, an adult of sound mind to execute a declaration governing the withholding or withdrawal of life sustaining treatment. (Health and Safety Code Section 7185 et seq.)

### **Proposed Law:**

- 1) This bill Authorizes an adult who is competent, a resident of California, determined by the attending physician and a consulting physician to be suffering from a terminal disease, and who has voluntarily expressed the wish to hasten the end of his or her life, to make both an oral and written request for medication for the purpose of hastening the end of his or her life in accordance with strict procedural requirements. (Health and Safety Code (HSC) Proposed Section 443.2)
- 2) Requires that any qualified patient utilizing the procedures under this measure must self-administer the medication provided, and further provides that nothing in the measure 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. It also provides that actions taken in accordance with the measure shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide under the law. (HSC Proposed Section 443.3)
- 3) Provides that no person shall receive a prescription for medication to hasten the end of his or her life unless a host of conditions are met, including that the patient has made an oral

request and a written request, and reiterated the oral request to his or her attending physician, not less than 15 days after making the initial oral request. At the time of the second oral request, the attending physician shall offer the patient the opportunity to rescind the request. (HSC Proposed Section 443).

### **Comments:**

#### **1) Effect on Psychologists.**

The proposed California Law is substantially based on Oregon's Death with Dignity Act (1997). The law would mandate that if the physician believes a patient to be suffering from depression or another psychological malady then counseling with a licensed psychologist or psychiatrist is required before the lethal prescription can be written. SB 128 has very similar definitions to the Oregon Law, but an abbreviated description of when psychological counseling would be necessary (see below).

Board staff contacted the Oregon Board of Psychologist Examiners regarding any impact on disciplinary matters, licensing, and Continuing Education/ Continuing Professional Development (CE/CPD) and was told that there was no impact because of the Death with Dignity Act. The Board's existing regulations regarding unprofessional conduct and gross negligence would cover offenses related to the bill. The counseling requirement to determine the competence of a person seeking to end his or her life is within the scope of practicing psychologists to whom the patient might be referred and does not require additional CE/CPD.

#### **Oregon Law**

*(3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available... (Oregon Statutes (ORS) Section 127.800 s.1.01.)*

#### **Proposed California Law:**

(d) "Competent" means that, in the opinion of a court or in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, the individual has the ability to make and communicate an informed decision to health care providers, including communication through a person familiar with the individual's manner of communicating, if that person is available. (HSC Section 443.1 (d))

#### **Oregon Law**

*"Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment....*

#### **Proposed California Law:**

(f) "Counseling" means one or more consultations, as necessary, between an individual and a psychiatrist or psychologist licensed in this state for the purpose of determining that the individual is competent and is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. (HSC Section 443.1 (f))

#### Oregon Law

*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. (ORS 127.825 s.3.03)*

#### Proposed California Statute

(a) Before prescribing aid-in-dying medication, the attending physician shall do all of the following:...

... (4) Refer the qualified individual for counseling if appropriate No aid-in-dying medication 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.. (HSC Section 443.5 (4))

2) BreEZe Impact. N/A.

#### 3) **Support and Opposition.**

##### *Support:*

AIDS Healthcare Foundation; AIDS Project Los Angeles (APLA); Alameda County Board of Supervisors; American Civil Liberties Union of California (ACLU); American Federation of State, County and Municipal Employees (AFSCME) AFL-CIO; American Medical Student Association (AMSA); American Medical Women's Association (AMWA); California Church IMPACT; California Primary Care Association (CPCA); California Senior Legislature (CSL); Cardinal Point at Mariner Square Residents' Association; City Council of Cathedral City; Civil Rights For Seniors; Compassion & Choices; Conference of California Bar Associations (CCBA); Congress of California Seniors (CCS); County of Santa Cruz, Board of Supervisors; Dave Jones, Insurance Commissioner; Death with Dignity National Center; Democrats of the Napa Valley Club; Democratic Party of Orange County; Democratic Party of Santa Barbara County; Democratic Women of Santa Barbara; Desert Stonewall Democrats; Diane Feinstein, United States Senator; Equality California; GLMA: Health Professionals Advancing LGBT Equality; Hemlock Society of San Diego; Gray Panthers of Long Beach; Laguna Woods Democratic Club; Lampoc Valley Democratic Club; Libertarian Party of Orange County; Los Angeles LGBT Center; Napa County Democratic Central Committee (NCDCC); National Association of Social Workers, California Chapter (NASW-CA); National Center for Lesbian Rights (NCLR); National Council of Jewish Women California (NCJW CA); Older Women's League-SF; Progressive Democrats of America (PDA) California; San Francisco AIDS Foundation; San Francisco for Democracy; San Mateo Democracy for America; Secular Coalition for California; Sierra County Democratic Party; Shared Crossing Project; Social Action and Missions Team of Bloom in the Desert Ministries United Church of Christ, Palm Springs, California; Sonoma County Democratic Party; South Orange County Democratic Club (SOCDC); I Care For Your Loved One: Compassionate Senior Services; Trinity County Progressives; thousands of individuals

##### *Opposition:*

Agudath Israel of California; Alliance of Catholic Health Care; ARC and United Cerebral Palsy California Collaboration; Arroyo Grande Community Hospital; Association of

Northern California Oncologists (ANCO); Autistic Self Advocacy Network (ASAN); California Catholic Conference, Inc.; California Disability Alliance (CDA); California Family Alliance; California Foundation for Independent Living Centers (CFILC); California Hospital Association (CHA); California Nurses for Ethical Standards; California ProLife Council; California Right to Life Committee, Inc.; Calvary Chapel Golden Springs; Capitol Resource Institute; Concerned Women for America; Dignity Health; Disability Rights Education & Defense Fund (DREDF); Faith & Public Policy (ministry of Calvary Chapel Chino Hills); Life Legal Defense Foundation; Life Priority Network; International Life Services; Medical Oncology Association of Southern California (MOASC); Mission Hospital; Mission Hospital Laguna Beach; National Right to Life Committee; North Orange County ProLife Chapter; Pajaro Valley Senior Coalition; Petaluma Valley Hospital; Providence Health & Services; Queen of the Valley Medical Center; Redwood Memorial Hospital, Fortuna; San Joaquin ProLife Council; Santa Rosa Memorial Hospital; Scholl Institute of Bioethics; Silicon Valley Independent Living Center; Sisters of Social Service of Los Angeles; St. Joseph Hospital, Eureka; St. Joseph Hospital, Orange; St. Jude Medical Center; St. Mary Medical Center; thousands of individuals

#### 4) History

##### 2015

**06/11/15** Referred to Coms. on HEALTH and JUD.  
**06/04/15** In Assembly. Read first time. Held at Desk.  
**06/04/15** Read third time. Passed. (Ayes 23. Noes 15.) Ordered to the Assembly.  
**06/02/15** Read second time. Ordered to third reading.  
**06/01/15** Ordered to second reading.  
**06/01/15** Read third time and amended.  
**06/01/15** Read second time and amended. Ordered to third reading.  
**05/28/15** From committee: Do pass as amended. (Ayes 5. Noes 2. Page 1147.)  
**(05/23/15)** Set for hearing May 28.  
**05/11/15** May 11 hearing: Placed on APPR. suspense file.  
**05/01/15** Set for hearing May 11.  
**04/14/2015** In SENATE. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.  
**04/07/2015** From SENATE Committee on JUDICIARY: Do pass as amended to Committee on APPROPRIATIONS. (5-2)  
**03/27/15** Set for hearing April 7.  
**03/26/15** From committee: Do pass and re-refer to Com. on JUD. (Ayes 6. Noes 2.) (March 25). Re-referred to Com. on Judiciary  
**03/17/15** From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.  
**02/27/15** Set for hearing March 25.  
**02/05/15** Referred to Coms. on HEALTH and JUD.  
**01/21/15** From printer. May be acted upon on or after February 20.  
**01/20/15** Introduced. Read first time. To Com. on RLS. for assignment. To print.



# California

## LEGISLATIVE INFORMATION

**SB-128 End of life. (2015-2016)**

AMENDED IN SENATE JUNE 01, 2015

AMENDED IN SENATE JUNE 01, 2015

AMENDED IN SENATE APRIL 14, 2015

AMENDED IN SENATE MARCH 17, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

**SENATE BILL****No. 128****Introduced by Senators Wolk and Monning****(Principal coauthors: Senators Jackson and Leno)****(Principal coauthors: Assembly Members Alejo and Eggman)****(Coauthors: Senators Block, Hall, Hancock, Hernandez, Hill, McGuire, and Wieckowski)****(Coauthors: Assembly Members Chu, Cooper, Frazier, Cristina Garcia, Low, Quirk, Rendon, and Mark Stone)****January 20, 2015**

An act to add Part 1.85 (commencing with Section 443) to Division 1 of the Health and Safety Code, relating to end of life.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 128, as amended, Wolk. End of life.

Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.

This bill would enact the End of Life Option Act authorizing an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to make a request for a drug prescribed pursuant to these provisions for the purpose of ending his or her life. The bill would establish the procedures for making these requests. The bill would also establish the forms to request an aid-in-dying drug and, under specified circumstances, an interpreter declaration to be signed subject to penalty of perjury, thereby imposing a crime and state-mandated local program. This bill would require specified information to be documented in the individual's medical record, including, among other things, all oral and written requests for an aid-in-dying drug.

This bill would prohibit a provision in a contract, will, or other agreement from being conditioned upon or affected by a person making or rescinding a request for the above-described drug. The bill would prohibit the sale, procurement, or issuance of any life, health, or accident insurance or annuity policy, health care service



plan, contract, or health benefit plan, or the rate charged for any policy or plan contract, from being conditioned upon or affected by the request. The bill would prohibit an insurance carrier from providing any information in communications made to an individual about the availability of an aid-in-dying drug absent a request by the individual, his or her attending physician at the behest of the individual, or the individual's designee. The bill would also prohibit any communication from containing both the denial of treatment and information as to the availability of aid-in-dying drug coverage.

This bill would provide immunity from civil, criminal, administrative, employment, or contractual liability or professional disciplinary action for participating in good faith compliance with the act, and would specify that the immunities and prohibitions on sanctions of a health care provider are solely reserved for conduct provided for by the bill. The bill would ~~provide that~~ *make* participation in activities authorized pursuant to ~~this bill shall be voluntary; its provisions voluntary, and would make health care providers immune from liability for refusing to participate in activities authorized pursuant to its provisions.~~ The bill would authorize a health care provider to prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this act while on the premises owned or under the management or direct control of that prohibiting health care provider, or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

This bill would make it a felony to knowingly alter or forge a request for drugs to end an individual's life without his or her authorization or to conceal or destroy a withdrawal or rescission of a request for a drug, if it is done with the intent or effect of causing the individual's death. The bill would make it a felony to knowingly coerce or exert undue influence on an individual to request a drug for the purpose of ending his or her life or to destroy a withdrawal or rescission of a request. By creating a new crime, the bill would impose a state-mandated local program. The bill would provide that nothing in its provisions is to be construed to authorize ending a patient's life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute, among other things, suicide or homicide.

This bill would require the State Public Health Officer to adopt regulations establishing additional reporting requirements for physicians and pharmacists to determine the use of, and compliance with, the act, and would require the State Public Health Officer to annually review a sample of certain records and the State Department of Public Health to make a statistical report of the information collected.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Part 1.85 (commencing with Section 443) is added to Division 1 of the Health and Safety Code, to read:

### **PART 1.85. End of Life Option Act**

**443.** This part shall be known and may be cited as the End of Life Option Act.

**443.1.** As used in this part, the following definitions shall apply:

- (a) "Adult" means an individual 18 years of age or older.
- (b) "Aid-in-dying drug" means a drug determined and prescribed by a physician for a qualified individual, which the qualified individual may choose to self-administer to bring about his or her death due to a terminal disease.
- (c) "Attending physician" means the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease.

(d) "Capacity to make medical decisions" means that, in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Section 4609 of the Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make and communicate an informed decision to health care providers, including communication through a person familiar with the individual's manner of communicating, if that person is available.

(e) "Consulting physician" means a physician who is independent from the attending physician and who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's terminal disease.

(f) "Department" means the State Department of Public Health.

(g) "End of Life Option Act Checklist" means a checklist identifying each and every requirement that must be fulfilled by a health care provider to be in good faith compliance with the End of Life Option Act should the health care provider choose to participate.

(h) "Health care provider" or "provider of health care" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of this code; and any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of this code.

(i) "Informed decision" means a decision by an individual with a terminal disease to request and obtain a prescription for a drug that the individual may self-administer to end the individual's life, that is based on an understanding and acknowledgment of the relevant facts, and that is made after being fully informed by the attending physician of all of the following:

(1) The individual's medical diagnosis and prognosis.

(2) The potential risks associated with taking the drug to be prescribed.

(3) The probable result of taking the drug to be prescribed.

(4) The possibility that the individual may choose not to obtain the drug or may obtain the drug but may decide not to ingest it.

(5) The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(j) "Medically confirmed" means the medical diagnosis and prognosis of the attending physician has been confirmed by a consulting physician who has examined the individual and the individual's relevant medical records.

(k) "Mental health specialist assessment" means one or more consultations between an individual and a mental health specialist for the purpose of determining that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

(l) "Mental health specialist" means a psychiatrist or a licensed psychologist.

(m) "Physician" means a doctor of medicine or osteopathy currently licensed to practice medicine in this state.

(n) "Public place" means any street, alley, park, public building, any place of business or assembly open to or frequented by the public, and any other place that is open to the public view, or to which the public has access.

(o) "Qualified individual" means an adult who has the capacity to make medical decisions and is a resident of California and has satisfied the requirements of this part in order to obtain a prescription for a drug to end his or her life.

(p) "Self-administer" means a qualified individual's affirmative, conscious, and physical act of *administering and* ingesting the aid-in-dying drug to bring about his or her own death.

(q) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.



**443.2.** (a) A qualified individual who is an adult with the capacity to make medical decisions and with a terminal disease may make a request to receive a prescription for an aid-in-dying drug if all of the following conditions are satisfied:

- (1) The individual's attending physician has diagnosed the individual with a terminal disease.
- (2) The individual has voluntarily expressed the wish to receive a prescription for an aid-in-dying drug.
- (3) The individual is a resident of California and is able to establish residency through any of the following means:
  - (A) Possession of a California driver license or other identification issued by the State of California.
  - (B) Registration to vote in California.
  - (C) Evidence that the person owns or leases property in California.
  - (D) Filing of a California tax return for the most recent tax year.
- (4) The individual documents his or her request pursuant to the requirements set forth in Section 443.3.
- (5) The individual has the physical and mental ability to self-administer the aid-in-dying drug.

(b) A person shall not be considered a "qualified individual" under the provisions of this part solely because of age or disability.

(c) A request for a prescription for an aid-in-dying drug under this part shall be made solely and directly by the individual diagnosed with the terminal disease and shall not be made on behalf of the patient, including, but not limited to, through a power of attorney, an advance health care directive, a conservator, health care agent, surrogate, or any other legally recognized health care decisionmaker.

**443.3.** (a) An individual seeking to obtain a prescription for an aid-in-dying drug pursuant to this part shall submit two oral requests, a minimum of 15 days apart, and a written request to his or her attending physician. The attending physician shall directly, and not through a designee, receive all three requests required pursuant to this section.

(b) A valid written request for an aid-in-dying drug under subdivision (a) shall meet all of the following conditions:

- (1) The request shall be in substantially the form described in ~~Section 443.9.~~ **443.10.**
- (2) The request shall be signed and dated, in the presence of two witnesses in accordance with paragraph (3), by the individual seeking the aid-in-dying drug.
- (3) The request shall be witnessed by at least two other adult persons who, in the presence of the individual, shall attest that to the best of their knowledge and belief that the individual is all of the following:
  - (A) A person who has the capacity to make medical decisions.
  - (B) Acting voluntarily.
  - (C) Not being coerced to make or sign the request.

(c) Only one of the two witnesses at the time the written request is signed may:

- (1) Be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the individual's estate upon death.
- (2) Own, operate, or be employed at a health care facility where the individual is receiving medical treatment or resides.

(d) The attending physician, consulting physician, or mental health specialist of the individual shall not be one of the witnesses required pursuant to paragraph (3) of subdivision (b).

**443.4.** (a) An individual may at any time withdraw or rescind his or her request for an aid-in-dying drug, or decide not to ingest an aid-in dying drug, without regard to the individual's mental state.

(b) A prescription for an aid-in-dying drug provided under this part may not be written without the attending physician directly, and not through a designee, offering the individual an opportunity to withdraw or rescind the request.

**443.5.** (a) Before prescribing an aid-in-dying drug, the attending physician shall do all of the following:

(1) Make the initial determination of all of the following:

(A) (i) Whether the requesting adult has the capacity to make medical decisions.

(ii) If there are indications of a mental disorder, the physician shall refer the individual for a mental health specialist assessment.

(iii) If a mental health specialist assessment referral is made, no aid-in-dying drugs shall be prescribed until the mental health specialist determines that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

(B) Whether the requesting adult has a terminal disease.

(C) Whether the requesting adult has voluntarily made the request for an aid-in-dying drug pursuant to Sections 443.2 and 443.3.

(D) Whether the requesting adult is a qualified individual pursuant to subdivision (m) of Section 443.1.

(2) Confirm that the individual is making an informed decision by discussing with him or her all of the following:

(A) His or her medical diagnosis and prognosis.

(B) The potential risks associated with ingesting the requested aid-in-dying drug.

(C) The probable result of ingesting the aid-in-dying drug.

(D) The possibility that he or she may choose to obtain the aid-in-dying drug but not take it.

(E) The feasible alternatives or additional treatment options, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(3) Refer the individual to a consulting physician for medical confirmation of the diagnosis and prognosis, and for a determination that the individual has the capacity to make medical decisions and has complied with the provisions of this part.

(4) Confirm that the qualified individual's request does not arise from coercion or undue influence by another person by discussing with the qualified individual, outside of the presence of any other persons, *except for an interpreter as required pursuant to this part*, whether or not the qualified individual is feeling coerced or unduly influenced by another person.

(5) Counsel the qualified individual about the importance of all of the following:

(A) Having another person present when he or she ingests the aid-in-dying drug prescribed pursuant to this part.

(B) Not ingesting the aid-in-dying drug in a public place.

(C) Notifying the next of kin of his or her request for an aid-in-dying drug. A qualified individual who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

(D) Participating in a hospice program.

(E) Maintaining the aid-in-dying drug in a safe and secure location until the time that the qualified individual will ingest it.

(6) Inform the individual that he or she may withdraw or rescind the request for an aid-in-dying drug at any time and in any manner.

(7) Offer the individual an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing the aid-in-dying drug.

(8) Verify, immediately prior to writing the prescription for aid-in-dying drug, that the qualified individual is making an informed decision.

(9) Confirm that all requirements are met and all appropriate steps are carried out in accordance with this part before writing a prescription for an aid-in-dying drug.

(10) Fulfill the record documentation required under Sections 443.7 and ~~443.17~~, 443.18.

(11) Complete the End of Life Option Act Checklist and include it in the individual's medical record.

(b) If the conditions set forth in subdivision (a) are satisfied, the attending physician may deliver the aid-in-dying drug in any of the following ways:

(1) Dispensing the aid-in-dying drug directly, including ancillary medication intended to minimize the qualified individual's discomfort, if the attending physician meets all of the following criteria:

(A) Is authorized to dispense medicine under California law.

(B) Has a current United States Drug Enforcement Administration (USDEA) certificate.

(C) Complies with any applicable administrative rule or regulation.

(2) With the qualified individual's written consent, contacting a pharmacist, informing the pharmacist of the prescriptions, and delivering the written prescriptions personally, by mail, or electronically to the pharmacist, who may dispense the drug to the qualified individual, the attending physician, or a person expressly designated by the qualified individual and with the designation delivered to the pharmacist in writing or verbally.

(c) Delivery of the dispensed drug to the qualified individual, the attending physician, or a person expressly designated by the qualified individual may be made by personal delivery, or, with a signature required on delivery, by United Parcel Service, United States Postal Service, Federal Express, or by messenger service.

**443.6.** Prior to a qualified individual obtaining an aid-in-dying drug from the attending physician, the consulting physician shall perform all of the following:

(a) Examine the individual and his or her relevant medical records.

(b) Confirm in writing the attending physician's diagnosis and prognosis.

(c) Determine that the individual has capacity to make medical decisions, is acting voluntarily, and has made an informed decision.

(d) If there are indications of a mental disorder, the consulting physician shall refer the individual for a mental health specialist assessment.

(e) Fulfill the record documentation required under this part.

*443.7. Upon referral from the attending or consulting physician pursuant to this part, the mental health specialist shall:*

*(a) Examine the qualified individual and his or her relevant medical records.*

*(b) Determine that the individual has the mental capacity to make medical decisions, act voluntarily, and make an informed decision.*

*(c) Determine that the individual is not suffering from impaired judgment due to a mental disorder.*

*(d) Fulfill the record documentation requirements of this part.*

~~443.7.~~ **443.8.** All of the following shall be documented in the individual's medical record:

(a) All oral requests for aid-in-dying drugs.

(b) All written requests for aid-in-dying drugs.

(c) The attending physician's diagnosis and prognosis, and the determination that a qualified individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision, or that the attending physician has determined that the individual is not a qualified individual.



.....Witness 2/Date



NOTE: Only one of the two witnesses may be a relative (by blood, marriage, registered domestic partnership, or adoption) of the person signing this request or be entitled to a portion of the person's estate upon death. Only one of the two witnesses may own, operate, or be employed at a health care facility where the person is a patient or resident.

(b) (1) The written language of the request shall be written in the same translated language as any conversations, consultations, or interpreted conversations or consultations between a patient and his or her attending or consulting physicians.

(2) Notwithstanding paragraph (1), the written request may be prepared in English even when the conversations or consultations or interpreted conversations or consultations were conducted in a language other than English if the English language form includes an attached interpreter's declaration that is signed under penalty of perjury. The interpreter's declaration shall state words to the effect that:

I (INSERT NAME OF INTERPRETER), am fluent in English and (INSERT TARGET LANGUAGE).

On (insert date) at approximately (insert time), I read the "Request for an Aid-In-Dying Drug to End My Life" to (insert name of individual/patient) in (insert target language).

Mr./Ms. (insert name of patient/qualified individual) affirmed to me that he/she understood the content of this form and affirmed his/her desire to sign this form under his/her own power and volition and that the request to sign the form followed consultations with an attending and consulting physician.

I declare that I am fluent in English and (insert target language) and further declare under penalty of perjury that the foregoing is true and correct.

Executed at (insert city, county, and state) on this (insert day of month) of (insert month), (insert year).

X \_\_\_\_\_ Interpreter signature

X \_\_\_\_\_ Interpreter printed name

X \_\_\_\_\_ Interpreter address

(3) An interpreter whose services are provided pursuant to paragraph (2) shall not be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the person's estate upon death. An interpreter whose services are provided pursuant to paragraph (2) shall meet the standards promulgated by the California Healthcare Interpreting Association or the National Council on Interpreting in Health Care or other standards deemed acceptable by the department for health care providers in California.

~~443.10.~~ **443.11.** (a) A provision in a contract, will, or other agreement executed on or after January 1, 2016, whether written or oral, to the extent the provision would affect whether a person may make, withdraw, or rescind a request for an aid-in-dying drug is not valid.

(b) An obligation owing under any contract executed on or after January 1, 2016, may not be conditioned or affected by a qualified individual making, withdrawing, or rescinding a request for an aid-in-dying drug.

~~443.11.~~ **443.12.** (a) The sale, procurement, or issuance of a life, health, or accident insurance or annuity policy, health care service plan contract, or health benefit plan, or the rate charged for a policy or plan contract may not be conditioned upon or affected by a person making or rescinding a request for an aid-in-dying drug.

(b) Notwithstanding any other law, a qualified individual's act of self-administering an aid-in-dying drug may not have an effect upon a life, health, or accident insurance or annuity policy other than that of a natural death from the underlying disease.

(c) An insurance carrier shall not provide any information in communications made to an individual about the availability of an aid-in-dying drug absent a request by the ~~individual, his or her attending physician at the behest of the individual, or the individual's designee.~~ *individual or his or her attending physician at the behest of the individual.* Any communication shall not include both the denial of treatment and information as to the availability of aid-in-dying drug coverage. For the purposes of this subdivision, "insurance carrier" means a health care service plan as defined in Section 1345 of this code or a carrier of health insurance as defined in Section 106 of the Insurance Code.

~~443.12.~~ **443.13.** (a) Notwithstanding any other law, a person shall not be subject to civil, criminal, administrative, employment, or contractual liability or professional disciplinary action for participating in good faith compliance

with this part, including an individual who is present when a qualified individual self-administers the prescribed aid-in-dying drug.

(b) A health care provider or professional organization or association shall not subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating in good faith compliance with this part or for refusing to participate in accordance with subdivision (e).

(c) Notwithstanding any other law, a health care provider shall not be subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for participating in this part, including, but not limited to, determining the diagnosis or prognosis of an individual, determining the capacity of an individual for purposes of qualifying for the act, providing information to an individual regarding this part, and providing a referral to a physician who participates in this part.

(d) (1) A request by a qualified individual to an attending physician to provide an aid-in-dying drug in good faith compliance with the provisions of this part shall not provide the sole basis for the appointment of a guardian or conservator.

(2) No actions taken in compliance with the provisions of this part shall constitute or provide the basis for any claim of neglect or elder abuse for any purpose of law.

(e) (1) Participation in activities authorized pursuant to this part shall be voluntary. ~~A person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of a patient's decision under this part, except as required by Sections 442 to 442.7, inclusive.~~ *Notwithstanding Sections 442 to 442.7, inclusive, a person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of an individual's decision under this part.*

(2) *Notwithstanding any other law, a health care provider is not subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for refusing to participate in activities authorized under the End of Life Option Act, including, but not limited to, refusing to inform a patient regarding his or her rights under the End of Life Option Act and not referring an individual to a physician who participates in activities authorized under the End of Life Option Act.*

~~(2)~~

(3) If a health care provider is unable or unwilling to carry out a qualified individual's request under this part and the qualified individual transfers care to a new health care provider, the individual may request a copy of his or her medical records pursuant to law.

~~443.13.~~ **443.14.** (a) Subject to subdivision (b), notwithstanding any other law, a health care provider may prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this part while on premises owned or under the management or direct control of that prohibiting health care provider or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

(b) A health care provider that elects to prohibit its employees, independent contractors, or other persons or entities, including health care providers, from participating in activities under this part, as described in subdivision (a), shall first give notice of the policy prohibiting participation under this part to the individual or entity. A health care provider that fails to provide notice to an individual or entity in compliance with this subdivision shall not be entitled to enforce such a policy against that individual or entity.

(c) Subject to compliance with subdivision (b), the prohibiting health care provider may take action, including, but not limited to, the following, as applicable, against any individual or entity that violates this policy:

(1) Loss of privileges, loss of membership, or other action authorized by the bylaws or rules and regulations of the medical staff.

(2) Suspension, loss of employment, or other action authorized by the policies and practices of the prohibiting health care provider.

(3) Termination of any lease or other contract between the prohibiting health care provider and the individual or entity that violates the policy.



(4) Imposition of any other nonmonetary remedy provided for in any lease or contract between the prohibiting health care provider and the individual or entity in violation of the policy.

(d) Nothing in this section shall be construed to prevent, or to allow a prohibiting health care provider to prohibit any other health care provider, employee, independent contractor, or other person or entity from any of the following:

(1) Participating, or entering into an agreement to participate, in activities under this part, while on premises that are not owned or under the management or direct control of the prohibiting provider or while acting outside the course and scope of the participant's duties as an employee of, or an independent contractor for, the prohibiting health care provider.

(2) Participating, or entering into an agreement to participate, in activities under this part as an attending physician or consulting physician while on premises that are not owned or under the management or direct control of the prohibiting provider.

(e) In taking actions pursuant to subdivision (c), a health care provider shall comply with all procedures required by law, its own policies or procedures, and any contract with the individual or entity in violation of the policy, as applicable.

(f) For purposes of this section:

(1) "Notice" means a separate statement in writing advising of the prohibiting health care provider policy with respect to participating in activities under this part.

(2) "Participating, or entering into an agreement to participate, in activities under this part" means doing or entering into an agreement to do any one or more of the following:

(A) Performing the duties of an attending physician as specified in Section 443.5.

(B) Performing the duties of a consulting physician as specified in Section 443.6.

(C) Performing the duties of a mental health specialist, in the circumstance that a referral to one is made.

(D) Delivering the prescription for, dispensing, or delivering the dispensed aid-in-dying drug pursuant to paragraph (2) of subdivision (b) of, and subdivision (c) of, Section 443.5.

(E) Being present when the qualified individual takes the aid-in-dying drug prescribed pursuant to this part.

(3) "Participating, or entering into an agreement to participate, in activities under this part" does not include doing, or entering into an agreement to do, any of the following:

(A) Diagnosing whether a patient has a terminal disease, informing the patient of the medical prognosis, or determining whether a patient has the capacity to make decisions.

(B) Providing information to a patient about this part.

(C) Providing a patient, upon the patient's request, with a referral to another health care provider for the purposes of participating in the activities authorized by this part.

(g) Any action taken by a prohibiting provider pursuant to this section shall not be reportable under Sections 800 to 809.9, inclusive, of the Business and Professions Code. The fact that a health care provider participates in activities under this part shall not be the sole basis for a complaint or report by another health care provider of unprofessional or dishonorable conduct under Sections 800 to 809.9, inclusive, of the Business and Professions Code.

(h) Nothing in this part shall prevent a health care provider from providing an individual with health care services that do not constitute participation in this part.

**443.14.443.15.** (a) A health care provider may not be sanctioned for any of the following:

(1) Making an initial determination pursuant to the standard of care that an individual has a terminal disease and informing him or her of the medical prognosis.

(2) Providing information about the End of Life Option Act to a patient upon the request of the individual.

(3) Providing an individual, upon request, with a referral to another physician.

(b) A health care provider that prohibits activities under this part in accordance with Section ~~443.13~~ **443.14** shall not sanction an individual health care provider for contracting with a qualified individual to engage in activities authorized by this part if the individual health care provider is acting outside of the course and scope of his or her capacity as an employee or independent contractor of the prohibiting health care provider.

(c) Notwithstanding any contrary provision in this section, the immunities and prohibitions on sanctions of a health care provider are solely reserved for actions taken pursuant to this part, and those health care providers may be sanctioned for conduct and actions not included and provided for in this part if the conduct and actions do not comply with the standards and practices set forth by the Medical Board of California.

~~443.15~~ **443.16.** (a) Knowingly altering or forging a request for an aid-in-dying drug to end an individual's life without his or her authorization or concealing or destroying a withdrawal or rescission of a request for an aid-in-dying drug is punishable as a felony if the act is done with the intent or effect of causing the individual's death.

(b) Knowingly coercing or exerting undue influence on an individual to request an aid-in-dying drug for the purpose of ending his or her life or to destroy a withdrawal or rescission of a request is punishable as a felony.

(c) For purposes of this section, "knowingly" has the meaning provided in Section 7 of the Penal Code.

(d) Nothing in this section shall be construed to limit civil liability.

(e) The penalties in this section do not preclude criminal penalties applicable under any law for conduct inconsistent with the provisions of this section.

~~443.16~~ **443.17.** Nothing in this part may be construed to authorize a physician or any other person to end an individual's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this part shall not, for any purposes, constitute suicide, assisted suicide, homicide, or elder abuse under the law.

~~443.17~~ **443.18.** (a) The State Public Health Officer shall annually review a sample of records maintained pursuant to Section ~~443.7~~ **443.8** and shall adopt regulations establishing additional reporting requirements for physicians and pharmacists pursuant to this part.

(b) The reporting requirements shall be designed to collect information to determine utilization and compliance with this part. The information collected shall be confidential and shall be collected in a manner that protects the privacy of the patient, the patient's family, and any medical provider or pharmacist involved with the patient under the provisions of this part.

(c) Based on the information collected, the department shall provide an annual compliance and utilization statistical report aggregated by age, gender, race, ethnicity, and primary language spoken at home and other data the department may determine relevant. The department shall make the report public within 30 days of completion of each annual report.

(d) The State Public Health Officer shall make available to health care providers the End of Life Option Act Checklist by posting it on its Internet Web site.

~~443.18~~ **443.19.** A person who has custody or control of any unused aid-in-dying drugs prescribed pursuant to this part after the death of the patient shall personally deliver the unused aid-in-dying drugs for disposal by delivering it to the nearest qualified facility that properly disposes of controlled substances, or if none is available, shall dispose of it by lawful means in accordance with guidelines promulgated by the California State Board of Pharmacy or a federal Drug Enforcement Administration approved take back program.

~~443.19~~ **443.20.** Any governmental entity that incurs costs resulting from a qualified individual terminating his or her life pursuant to the provisions of this part in a public place shall have a claim against the estate of the qualified individual to recover those costs and reasonable attorney fees related to enforcing the claim.

**SEC. 2.** The Legislature finds and declares that Section 1 of this act, which adds Section ~~443.17~~ **443.18** to the Health and Safety Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:



(a) Any limitation to public access to personally identifiable patient data collected pursuant to Section ~~443.17~~ **443.18** of the Health and Safety Code as proposed to be added by this act is necessary to protect the privacy rights of the patient and his or her family.

(b) The interests in protecting the privacy rights of the patient and his or her family in this situation strongly outweigh the public interest in having access to personally identifiable data relating to services.

(c) The statistical report to be made available to the public pursuant to subdivision (c) of Section ~~443.17~~ **443.18** of the Health and Safety Code is sufficient to satisfy the public's right to access.

**SEC. 3.** The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**SEC. 4.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.