

## INFORMATION ONLY – NO ACTION REQUIRED

### **ASSEMBLY BILL X2-15 (Eggman), Chapter 1, Statutes of 2015**

**This law becomes effective the 91st day after adjournment of the second extraordinary session. The second extraordinary session is still ongoing.**

**Affects:** State Department of Public Health

**Subject:** End of life

**Summary:** [Assembly Bill \(AB\) X2-15](#) repeals [Part 1.85](#) (commencing with section 442) and adds Part 1.85 (commencing with section 443) of Division 1 of the Health and Safety Code

### **OVERVIEW**

This bill enacts the End of Life Option Act and authorizes a mentally competent adult, who has been determined by his or her attending physician to be suffering from a terminal disease, to make a request for a drug for the purpose of ending his or her own life. This bill establishes a procedure for making these requests. This bill requires specific information to be documented in the individual's medical record, including all oral and written requests for an aid-in-dying drug.

The bill makes participation by health care providers and employees voluntary and makes health care providers immune from liability for refusing to engage in activities authorized.

This bill also specifies that a person or entity that elects, for reasons of conscience, morality, or ethics, not to participate, is not required to take any action in support of an individual's decision. The bill also provides a person, except as provided, immunity from civil or criminal liability solely because the person was present when the qualified individual self-administered the drug, or the person assisted the qualified individual by preparing the aid-in-dying drug so long as the person did not assist with the ingestion of the drug.

The bill makes 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 also makes it a felony to knowingly coerce or exert undue influence on an individual to request the aid-in-dying drug, destroy a withdrawal or rescission of the request, or to administer an aid-in-dying drug to an individual without their knowledge or consent.

## **Participation by Licensees and Employees**

Residential Care Facilities for the Elderly (RCFE) are not considered health care providers or health care facilities under California law. For purposes of this bill, RCFE licensees and employees of the licensees are considered to be entities and individuals, as described in Section 443.14(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 by [this law] ... is not required to take any action in support of an individual’s decision under this part.”

“Participating in activities pursuant to this part” are described in Section 443.15(f), and, specific to the RCFE environment, include:

- Delivering the prescription for, dispensing, or delivering the dispensed aid-in-dying drug [Section 443.15(f)(2)(D)]
- Being present when the qualified individual takes the aid-in-dying drug prescribed [Section 443.15(f)(2)(E)]

Licensee may elect, for reasons of conscience, morality or ethics, not to have employees participate in activities pursuant to this act. Licensees may inform residents and prospective residents whether the licensee has elected not to participate in the activities related to the End of Life Option Act.

## **Resident’s Rights**

Individuals living in an RCFE and determined to be qualified to request the aid-in-dying drug (“qualified resident”) retain the rights to obtain and self-administer the prescription, regardless if the licensee has determined that the entity and employees elect to not participate in activities pursuant to this act. The resident becomes solely responsible to obtain and prepare the medication for self-administration. The qualified resident may also store their medication even if the RCFE centrally stores medication (see Medication Storage below).

The decision of a qualified resident to exercise their rights under this law shall not be basis for an eviction.

## **Written Request Form**

The End of Life Option Act requires an individual requesting a prescription for an aid-in-dying drug to submit two oral requests and a written request to his or her attending physician. The request shall be signed and dated, in the presence of two witnesses, by the individual seeking the aid-in-dying drug. The witnesses shall attest that to the best of their knowledge and belief that the individual is all of the following:

- An individual who is personally known to them or has provided proof of identity.
- An individual who voluntarily signed this request in their presence.
- An individual who they believe to be of sound mind and not under duress, fraud, or undue influence.
- Not an individual for whom either of them is the attending physician, consulting physician, or mental health specialist.

The law states only one of the two witnesses at the time the written request is signed shall own, operate, or be employed at a health care facility where the person is a patient or resident (Section 443.3). As stated previously, RCFE licensees and employees are not considered to be health care facilities or health care providers under California law. Therefore, one or both witnesses of the written request form can be obtained from facility staff that voluntarily elects to sign.

### **Medication Storage**

Qualified residents residing in RCFEs may elect to store the aid-in-dying drug themselves rather than relying upon the RCFE to store the medication. The aid-in-dying drug may be stored within the qualified resident's room or may be stored outside the facility with a friend or family member. Qualified residents will be counseled by the consulting physician on the importance of maintaining the aid-in-dying drug in a safe and secure location until the time of ingestion [Section 443.5(a)(5)].

RCFEs with a central medication storage policy cannot require a qualified resident to have their aid-in-dying medication centrally stored as long as the qualified resident has the medication in a safe and secure location.

The person or entity with custody or control of any unused aid-in-dying drugs after the death of the resident must ensure the appropriate disposal of the aid-in-dying medication. The person with custody or control of any unused aid-in-dying drugs or RCFE staff shall personally deliver the unused aid-in-dying medication 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 [Section 443.20].

### **Resident Disclosures**

Section 443.5(5)(A-E) of the law requires physicians to counsel qualified residents on the importance of the following:

- Having another person present when he or she ingests the aid-in-dying drug.
- Not ingesting the aid-in-dying drug in a public place.
- Notifying the next of kin of his or her request for an aid-in-dying drug.
- Participating in a hospice program.

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

There are no requirements under this law for a qualified individual to disclose to anyone their intent to use the aid-in-dying drug (except for the medical professionals involved in qualifying the individual and dispensing the medication). Therefore, residents considering the use of the aid-in-dying drug or qualified to take the drug are not required to inform the licensee or facility staff of their intent to exercise their rights under this law.

However, qualified residents are encouraged to provide transparency with the licensee and direct care staff. With the transparency, the qualified resident, his or her family members or friends and the facility staff can provide an environment supportive of the qualified resident’s decision.

### **Initial Participation in Other States**

The number of qualified individuals in California that elect to use the end-of-life drug is unknown. In other states with similar laws, participation during the first years after passage of the law is low. As shown by the chart below, very few individuals self-administered the medication while living in an assisted living environment.

	<b>Deaths after the Passage of Death with Dignity Acts</b>			
	<b>Oregon (effective 1998)</b>		<b>Washington (effective 2009)</b>	
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 1</b>	<b>Year 2</b>
# deaths from aid-in-dying drug	16	27	36	51
# deaths from aid-in-dying drug in long term care, assisted living or foster care facility	3	2	0	2