

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: ABX2 15
Author: Eggman
Chapter: 1
Bill Date: September 3, 2015, Amended
Subject: End of Life
Sponsor: Author

DESCRIPTION OF CURRENT LEGISLATION:

This bill establishes the End of Life Option Act (Act) in California, which will remain in effect until January 1, 2026. This Act gives a mentally competent, adult California resident who has a terminal disease the legal right to ask for and receive a prescription from his or her physician to hasten death, as long as required criteria is met.

BACKGROUND

The End of Life Option Act is modeled after Oregon law that was enacted in 1997. This medical practice is also recognized in Washington, Vermont, and Montana under the State Supreme Court's 2010 decision in the *Baxter* case. The data collected in Oregon shows that the end of life option is used in fewer than 1 in 500 deaths (60 to 70 a year out of a total of over 30,000 deaths). Comparable numbers are seen in the State of Washington.

ANALYSIS

This bill allows a competent, qualified individual, who is an adult with a terminal disease, to make a request to receive a prescription for aid-in-dying drug, if all of the following conditions are satisfied:

- The individual's attending physician has diagnosed the individual with a terminal disease. Terminal disease is defined as an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.
- The individual has voluntarily expressed the wish to receive a prescription for aid-in-dying drug.
- The individual is a resident of California and is able to establish residency through either possession of a California driver's license or other identification issued by the State of California, being registered to vote in California, evidence that the person owns or leases property in California, or the filing of a California tax return for the most recent tax year.
- The individual documents his or her request.
- The individual has the physical and mental ability to self-administer the aid-in-dying drug.

This bill would specify that a person may not be considered a qualified individual solely because of age or disability. This bill would specify that a request for a prescription for aid-in-dying drug can only be made solely and directly by the individual diagnose with the terminal disease and shall not be made on behalf of the patient, through a power of attorney, advance health care directive, a conservator, health care agent, surrogate, or any other legally recognized health care decision maker.

This bill would require an individual seeking to obtain a prescription for an aid-in-dying drug to submit two oral requests, a minimum of 15 days apart, and a written request to his or her attending physician. The attending physician must receive all three requests required directly. A valid written request must meet all of the following conditions:

- Shall be in the form specified in this bill;
- Shall be signed and dated, in the presence of two witnesses, by the individual seeking the aid-in-dying drug; and
- 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, the individual is personally known to them or has provided proof of identity, is acting voluntarily and signed the request in their presence, and is of sound mind and not under duress, fraud, or undue influence. This bill would specify that only one of the two witnesses may 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; or may own, operate, or be employed at a health care facility where the individual is receiving medical treatment or resides. The attending physician, consulting physician, or mental health specialist of the individual cannot be one of the witnesses.

This bill would specify that an individual may rescind his or her request for aid-in-dying drug, or decide not to ingest an aid-in-dying drug, without regard to the individual's mental state. The attending physician is required to offer the qualified individual an opportunity to withdraw or rescind the request.

This bill defines an attending physician as the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease. Before prescribing an aid-in-dying drug, the attending physician must do all of the following:

- Make the initial determination whether the requesting adult has the capacity to make medical decisions, and if there are indications of a mental disorder, refer the individual for a mental health specialist assessment. If a mental health specialist assessment referral is made, no aid-in-dying drugs can be prescribed until the specialist determines the individual has the capacity to make medical decisions and is not suffering from impaired judgment. The attending physician must determine whether the requesting adult has a terminal disease, determine if the requesting adult has voluntarily made the request for an aid-in-dying drug, and determine if the requesting adult meets the requirements of a qualified individual.

- Confirm the individual is making an informed decision by discussing his or her medical diagnosis and prognosis; the potential risks and probable result associated with ingesting the aid-in-dying drug; the possibility that he or she may choose to obtain the aid-in-dying drug but not take it; and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control.
- 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 requirements of this bill. The consulting physician is independent from the attending physician and must be qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's terminal disease. Before a qualified individual obtains an aid-in-dying drug from the attending physician, the consulting physician must examine the individual and his or her relevant medical records, confirm in writing the attending physician's diagnosis and prognosis, determine that the individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision. The consulting physician must fulfill the record documentation required by this bill and submit the compliance form to the attending physician.
- Confirm the 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, whether or not the qualified individual is feeling coerced or unduly influenced by another person.
- Counsel the qualified individual about the importance of having another person present when he or she ingests the aid-in-dying drug, the importance of not taking the aid-in-dying drug in a public place, the importance of notifying the next of kin of his or her request for the aid-in-dying drug, the importance of participating in a hospice program, and the importance of maintaining the aid-in-dying drug in a safe and secure location until the time that the qualified individual will ingest it.
- Inform the individual that he or she may withdraw or rescind the request for aid-in-dying drug at any time and in any manner.
- Offer the qualified individual the opportunity to withdraw or rescind the request for aid-in-dying drug before prescribing the aid-in-dying drug.
- Verify, immediately prior to writing the prescription for aid-in-dying drug, that the qualified individual is making an informed decision.
- Confirm that all requirements are met and all appropriate steps are carried out in accordance with this bill before writing a prescription.
- Fulfill the required record documentation pursuant to this bill.
- Complete the attending physician checklist and compliance form included in this bill and collect the consulting physician compliance form also included in this bill and include both forms in the individual's medical record and also submit both forms to the California Department of Public Health (CDPH).
- Give the qualified individual the final attestation form, included in this bill, with the instruction that the form be filled out and executed by the qualified individual within 48 hours prior to the individual choosing to self-administer the aid-in-dying drug.

If an individual is referred to a mental health specialist by the attending or consulting physician, the mental health specialist must examine the individual and his or her relevant medical records; determine that the individual has the mental capacity to make medical decisions, act voluntarily, and make an informed decision; determine that the individual is not suffering from impaired judgment due to a mental disorder; and fulfill the record documentation requirements of this bill.

This bill would require the following to be documented in the individual's medical record:

- All oral requests for aid-in-dying drugs.
- All written requests for aid-in-dying drugs.
- The attending physician's diagnosis and prognosis, 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.
- The consulting physician's diagnosis and prognosis, verification that the qualified individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision, or that the consulting physician has determined that the individual is not a qualified individual.
- A report of the outcome and determinations made during a mental health specialist's assessment, if performed.
- The attending physician's offer to the qualified individual to withdraw or rescind his or her request at the time of the individual's second oral request.
- A note by the attending physician indicating that the requirements in this bill have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying drug prescribed.

If the requirements are met, the attending physician may deliver the aid-in-dying drug in any of the following ways:

- Dispense the aid-in-dying drug directly if the physician is authorized to dispense medicine under California law, has a current United States Drug Enforcement Administration certificate, and has complied with any applicable administrative rule or regulation.
- With the qualified individual's written consent, the attending physician may contact a pharmacist and deliver the prescription to the pharmacist, who shall dispense the medications to the qualified individual, the attending physician, or a person expressly designated by the qualified individual.

Within 30 days of writing a prescription for an aid-in-dying drug, the attending physician must submit to CDPH, a copy of the qualifying patient's written request, the attending checklist and compliance form, and the consulting physician compliance form. Within 30 calendar days following the individual's death from ingesting the aid-in-dying drug, or any other cause, the attending physician must submit the attending physician follow up form to CDPH. Upon receiving the final attestation form from the qualified individual, the attending

physician shall add this form to the medical records of the individual.

CDPH must collect and review the information submitted by the attending physician, which shall be confidential. Beginning on July 1, 2017, and each year thereafter, based on the information collected in the previous year, CDPH is required to create a report with the information collected. The report must include the number of people for whom the aid-in-dying prescription was written; the number of known individuals who died each year that received aid-in-dying prescriptions and the cause of death; the total cumulative number of aid-in-dying prescriptions written; the total cumulative number of people who died due to use of aid-in-dying drugs; the number of people who died who were enrolled in hospice or other palliative care programs; the number of known deaths in California from using aid-in-dying drugs per 10,000 deaths in California; the number of physicians who wrote prescriptions for aid-in-dying drugs; and demographic percentages of people who died due to using an aid-in-dying drug, for age at death, education level, race, sex, type of insurance, and underlying illness.

CDPH must post on its website the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician follow up form. This bill allows the Medical Board of California (Board) to update the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician follow up form. However, this bill already includes the actual forms to be used, until and unless they are updated by the Board.

This bill states that a death resulting from the self-administering of an aid-in-dying drug is not suicide, preventing health and insurance coverage from being exempt on that basis. This bill also provides that an individual's act of self-administering 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 illness. This bill prohibits an insurance carrier from providing any information in communications made about the availability of an aid-in-dying drug, unless it is requested by the individual or the individual's attending physician. This bill also prohibits any communication from including both the denial of treatment and information as to the availability of aid-in-dying drug coverage.

This bill prohibits a person from being subject to civil or criminal liability solely because the person was present when the qualified individual self-administers the prescribed aid-in-dying drug. This bill permits a person who is present to prepare the aid-in-dying drug (but not assist in the ingesting of the drug) without civil or criminal liability.

This bill prohibits a health care provider or professional organization or association from censoring, disciplining, suspending, or revoking licensure, privileges, membership, or administering other penalty to an individual for participating or refusing to participate in good faith compliance with this bill.

This bill specifies that 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 bill shall not be the sole basis for the appointment of a guardian or conservator.

This bill provides liability protections for providers and specifies that health care providers are not 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 bill, as specified. This bill prohibits a health care provider from being sanctioned for making an initial determination that an individual has a terminal illness and informing him or her of the medical prognosis; providing information about the End of Life Option Act to a patient upon the request of the individual; providing an individual, upon request, with a referral to another physician; or, contracting with an individual to act outside the course and scope of the provider's capacity as an employee or independent contractor of a health care provider that prohibits activities under this bill.

This bill permits a health care provider to prohibit its employees, independent contractors, or other persons from participating in activities under this bill while on premises owned or under the management or direct control of that prohibiting health care provider, as specified. This bill indicates that nothing shall be construed to prevent, or to allow a prohibiting health care provider to prohibit its employees or contractor from participating in activities under this bill, as specified.

This bill specifies that notwithstanding any contrary provision in this bill, the immunities and prohibitions on sanctions of a health care provider are solely reserved for actions of a health care provider taken pursuant to this bill. Additionally, health care providers may be sanctioned by their licensing board or agency for conduct and acts of unprofessional conduct, including failure to comply in good faith with this bill. This bill provides that nothing in this bill 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. This bill specifies that actions taken in accordance with this bill shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, homicide, or elder abuse under the law.

This bill makes it a felony to knowingly alter or forge 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 if the act is done with the intent or effect of causing the individual's death, or to knowingly coerce or exert undue influence on an individual to request or ingest an aid-in-dying drug for the purpose of ending his or her life or to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without his or her knowledge or consent.

The Board, as a regulatory agency, historically has not taken positions on policy bills that affect an individual's rights in end-of-life health care choices. As such, the Board did not take a policy position on SB 128 (Wolk), which is very similar to this bill.

FISCAL: None to the Board

SUPPORT: Advisory Council of the Central Coast Commission for Senior Citizens; AIDS Healthcare Foundation; AIDS Project Los Angeles; American Nurses Association\California; California Association for Nurse Practitioners; California Association of Marriage and Family Therapists; California Chapter of the National Association of Social Workers; California Church IMPACT; California Commission on Aging; California Democratic Party; California Primary Care Association; California Psychological Association; California Senior Legislature; Cardinal Point at Mariner Square Residents' Association; Church Council of West Hollywood United Church of Christ; City of Cathedral City; City of Santa Barbara; Coast side Democrats; Compassion and Choices California; Conference of California Bar Associations; Democratic Party of Orange County; Democratic Party of Santa Barbara County; Democratic Service Club of Santa Barbara County; Desert Ministries United Church of Christ; Desert Stonewall Democrats; Ethical Culture Society of Silicon Valley; Five Counties Central Labor Council; Full Circle Living and Dying Collective; GLMA: Health Professionals Advancing LGBT Equality; Gray Panthers of Long Beach; Humanist Society of Santa Barbara; Humboldt and Del Norte Counties Central Labor Council; Laguna Woods Democratic Club; Lompoc Valley Democratic Club; Los Angeles LGBT Center; Mar Vista Community Council; Potrero Hill Democratic Club; Progressive Christians Uniting; Sacramento Central Labor Council, AFL-CIO; San Benito County Democratic Central Committee; San Francisco AIDS Foundation; San Mateo County Democracy for America; San Mateo County Democratic Party; San Mateo County Medical Association; Santa Barbara County Board of Supervisors; Santa Cruz City Council; Sierra County Democratic Central Committee; South Orange County Democratic Club; Tehachapi Mountain Democratic Club; Unitarian Universalist Church of the Verdugo Hills; Ventura County Board of Supervisors; and Visalia Democratic Club

OPPOSITION: Agudath Israel of California; Alliance of Catholic Health Care; Association of Northern California Oncologists; California Catholic Conference; California Disability Alliance; California Foundation for Independent Living Centers; Coalition of Concerned Medical Professionals; Communities Actively Living Independent and Free; Communities United in Defense of Olmstead; Dignity Health; Disability Action Center; Disability Rights California; Disability Rights Education and Defense Fund; FREED Center for Independent Living; Independent Living Center of Southern California; Independent Living Resource Center of San Francisco; Medical Oncology Association of Southern

California; Patients' Rights Action Fund; Placer Independent Resource Services; Rabbinical Council of California; Silicon Valley Independent Living Center; and The Arc of California

IMPLEMENTATION:

- Newsletter article(s), including one stand-alone article for physicians
- Notify/train Board staff, Department of Consumer Affairs, Division of Investigation staff, and the Attorney General's Office, Health Quality Enforcement Section
- Update the Board's website to include information on the End of Life Option Act and links to CDPH's webpage that includes links to the forms required for attending and consulting physicians