



Health Care Compliance Association
Denver Regional Conference

Colorado End-Of-Life Options Act
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Agenda

- Background
- Qualified Individuals
- Health Care Providers (focus Physicians and Hospitals)
 - Non-Participation (Opt-Out) and Conscience Clause
 - Participation (Opt-In)
- Colorado Department of Public Health and Environment (“CDPHE”) Emergency Rules and Rule-Making Hearing

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Background

- Colorado End-of-Life Act (the “Act”) C.R.S. § 25-4-101, *et seq.*
 - Proposition 106
 - Passed by Colorado voters in November, 2016
 - Effective in December 2016
- Based on Oregon Death With Dignity Act, Or. Rev. Stat. §§ 127.800-876, passed in 1994

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Background

- The Basics:
 - A qualified terminally ill individual with a prognosis of six months or less may **request** and **self-administer** medical aid-in-dying medications to voluntarily end his/her life
 - A physician **may prescribe** medical aid-in-dying medications under certain circumstances
 - Health care providers **may choose** to participate in providing medical aid-in-dying medications (“Conscience Clause”)

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Qualified Individual

- “Qualified Individual”
 - Terminally ill;
 - Adult;
 - Prognosis of six months or less;
 - Mental capacity;
 - Colorado resident;
 - Informed decision (7 steps); and
 - Meets other requirements of the Act to receive a prescription for medical aid-in-dying medications (§102(13))

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Health Care Provider

- “Health care provider”
 - A **person** licensed / authorized to administer health care or dispense medications in the ordinary course of business or practice of a profession
 - A **health care facility**, including a long term care and continuing care retirement community (§ 102(4))

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Health Care Provider

- “Health care provider”
 - “Person” includes an individual or an entity. C.R.S. § 2-4-401(8)
 - “Persons” that administer health care or dispense medication in the ordinary course of business or practice of a profession may include:
 - Physician, Pharmacist, Nurse
 - Hospital, Hospice, Nursing Facility, Pharmacy, Professional Corporation, Provider Network

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Health Care Provider

- A health care provider **may choose** whether to participate in providing medical aid-in-dying medication to an individual (§117(1))
 - “Conscience Clause”
- Recommendation – for health care providers that are entities or health care facilities, participation should be determined by the governing body

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Health Care Provider

- A health care provider that is a **health care facility** must **notify patients** in writing of its policy on medical aid-in-dying medication (§118(3))
- A health care facility that fails to provide advance notification to patients is not entitled to enforce its policy (§118(3))
 - This provision is not part of the Conscience Clause, but relates to prescriptions for self-administration on the facility premises
 - Recommendation – Admissions Consent, Patient Rights, Website, etc.

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Non-Participation (Opt-Out)

- Under the Conscience Clause, a health care provider can **chose not to participate** (§117(1))
- Only obligation of non-participating provider relates to medical records transfer:
 - If a health care provider is unable or unwilling to carry out a request for medical aid-in-dying medication and the individual transfers his/her care to a new health care provider, the prior health care provider must **transfer a copy of relevant medical records** upon request (§117(2))

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Non-Participation (Opt-Out)

- What does it mean not to participate?
- “Participation” isn’t defined. Participation may include:
 - Prescribing medical aid-in-dying medications
 - Dispensing medical aid-in-dying medications
 - Storing medical aid-in-dying medications
 - Attending patient self-administration
 - Otherwise taking part in medical aid-in-dying

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Non-Participation (Opt-Out)

- A health care facility **may prohibit a physician** employed or under contract **from writing a prescription** for medical aid-in-dying medication for a Qualified Individual who intends to use the medical aid-in-dying medication **on the facility’s premises**
 - **Notify the physicians** in writing of facility’s policy regarding medical aid-in-dying medications on the premises
 - Failure to notify the physician prohibits enforcement of the policy (§118(1))
 - **Notify patients** in writing of facility policy on medical aid-in-dying medication on the premises (§118(3))
- Separate from Conscience Clause

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Non-Participation (Opt-Out)

- Can a hospital opt-out under the Act?
- Individuals may **request**, but have no right to receive, medical aid-in-dying medications
- Health care provider, including a hospital
 - May **choose** not to participate
 - No duty to participate in medical aid-in-dying under Conscience Clause
- Health care facility, including a hospital
 - May **prohibit** employed or contracted physicians from writing a prescription for medical aid-in-dying medications use on the facility's premises
 - Notify physicians and patients

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Non-Participation (Opt-Out)

- Can a hospital opt-out under the Act?
- Legal Opinion – Office of Legislative Legal Services 2/20/17
 - Does the term “health care provider” include health care facilities, such as hospitals, nursing care facilities, or hospice entities, and if it does, can health care facilities opt out under the Act’s conscience clause?
 - The “plain language” of the statutory definition of a “health care provider” includes a “health care facility”
 - Health care facility includes hospitals, nursing care facilities, hospices, etc.

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Non-Participation (Opt-Out)

- Non-Participating Hospital Policy (cont.)
 - Prohibit dispensing medical aid-in-dying medications
 - Prohibit storage of medical aid-in-dying medications
- Notify physicians in writing regarding prohibition against prescribing for use on premises (§118(1))
- Notify patients in writing (§118(3))
- Transfer medical records to a new health care provider (§117)
- Supportive care

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Non-Participation (Opt-Out)

- **Non-Participating Hospital**
 - Few defined parameters for non-participating hospital
 - Medical aid-in-dying is not part of an Advance Directive (which apply when patient becomes incapacitated)
 - Recommend: Develop policy on scope of prohibited activities
 - Prohibit self-administration of medical aid-in-dying medication on premises
 - Prohibit physicians from writing prescription for medical aid-in-dying medication for a Qualified Individual who intends to self-administer on the hospital premises

Participation (Opt-In)

- **Attending Physician responsibilities:**
 - Primary responsibility for the care of the terminally ill individual (§102(2))
 - Receive from the Qualified Individual:
 - First oral request;
 - Second oral request (separated by at least 15 days); and
 - Valid written request
 - Form, signed, dated
 - Two qualified witnesses (conflict restrictions) to the individual's mental capacity, voluntary action, lack of coercion

Participation (Opt-In)

- **Attending Physician responsibilities (cont):**
 - Examine individual
 - Examine medical records
 - Determine:
 - Terminal illness;
 - 6 month prognosis;
 - Mental capability;
 - Informed decision (7-part test); and
 - Voluntary request

Participation (Opt-In)

- **Attending Physician responsibilities (cont):**
 - Request proof of Colorado residency
 - Refer to a Consulting Physician to confirm diagnosis, prognosis, mental capability, informed consent and voluntary action
 - Refer to a Mental Health Professional if individual may not be mentally capable
 - Provide opportunity to rescind before writing prescription
 - Dispense or write and deliver prescription for aid-in-dying medications

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Participation (Opt-In)

- **Attending Physician responsibilities (cont):**
 - Documentation
 - Death certificate signature
 - Receive unused medications
 - CDPHE reporting requirements
 - (§§104, 105, 106, 109, 111, 113)

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Participation (Opt-In)

- **Consulting Physician**
 - Examine individual
 - Confirm Attending Physician findings
 - Refer to Mental Health Professional if individual may not be mentally capable (§107)
- **Mental Health Professional**
 - Psychiatrist or Psychologist
 - Evaluate individual
 - Conclude whether individual is mentally capable (§108)

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Participation (Opt-In)

- **Health Care Facilities**
 - Few defined responsibilities for a participating facilities
 - Recommendations - Develop policies to ensure compliance and promote good faith immunity under the Act
 - Before dispensing or permitting self-administration of medical aid-in-dying medication on premises:
 - Ensure documentation of each element by Attending Physician, Consulting Physician and Mental Health Professional (if applicable)

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Participation (Opt-In)

- **Health Care Facilities**
 - Dispensing of medical aid-in-dying medication
 - Self-administered medication policy
 - Hospital Conditions of Participation, 42 CFR §482.23; Colorado General Hospital regulations, 6 CCR 1011-1, Ch. 4, Sec. 13.102.
 - Assisted Suicide Funding Restriction, 42 USC §14401, *et seq.*
 - Review Medical Staff Bylaws – Are AMA standards incorporated ? AMA currently opposes end-of-life (Is AMA reconsidering?)
 - Educate staff

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Participation (Opt-In)

- **Health Care Facilities**
 - Individual providers within a participating facility may still choose not to participate in providing medical aid-in-dying medication (§117(1))
 - No discipline, suspension, loss of privileges, etc. for good faith reliance on the Act or refusing to participate under the Act (§118(2))

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Resources

- Consult your lawyer!
- Prop 106 - CRS §25-48-101, *et seq.*
<http://www.sos.state.co.us/pubs/elections/initiatives/titleBoard/filings/2015-2016/145Final.pdf>
- Colorado Hospital Association:
www.cha.com/prop106

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