

**DEPARTMENT OF STATE HOSPITALS
INITIAL STATEMENT OF REASONS**

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations
Article 6. End of Life Option Act

The Department of State Hospitals (Department) proposes to adopt Section 4600 – End of Life Option.

Section 4600: End of Life Option Act Participation.

Purpose:

This section provides the Department's policy for the End of Life Option Act (Act). Pursuant to the Act, the Department ensures that the patients under the care and custody of the Department are provided the proper care and services available. However, due to the special population and commitment of the patients, there are limitations to access the end-of-life option under the Act to protect the safety of all patients.

Problem:

The Act requires that if a health care provider is not going to allow for the Act to be implemented, the Department is required to create a policy prohibiting participation. The Department created the regulations pursuant to the Administrative Procedure Act to communicate the Department's policy to the public, employees, and patients.

Rationale:

Based on the Department's security and safety needs, the Department is not allowing DSH employees to implement the act on DSH premises without a court order. The Act requires that a qualified patient be able to retain the aid-in-dying drug in their possession, and self-administer the drug at any time. This is not possible at the Department due to the patient population as well as the facility setting. Since DSH is not allowing the employees to implement the act due to the safety and security reasons, the Act requires that the department create a policy prohibiting employees from participating in the Act. This regulation lays out the general policy of DSH.

Section 4601. Petitions to the Superior Court and Access to the End of Life Option Act.

Purpose:

This section will allow terminally ill patients, defined under the Act, to be able to petition to the superior court of the county of commitment to get released from the custody and care of the Department. If the court denies a patient's petition for release, this section provides the option for a patient to petition the court to determine that they are a qualified individual under the Act. The patient will need to petition and obtain the necessary court order. This section also provides how the Department will provide a patient access to the Act when the committing court orders the Department to provide this access to a patient by either facilitating and obtaining placement in an outside facility or providing a set up at the hospital

Problem:

Patients who may be qualified under the Act may not access the aid-in-dying drug at the facility due to the safety and security concerns of the institutionalized setting, where patients are committed to the Department by the court. If the court orders that a patient is qualified to participate in the Act and the court orders the Department to allow the patient to participate in the Act, this section provides how the Department will allow the patient to participate, by allowing the patient access to an off-site medical facility.

Rationale:

DSH is not allowing the employees of the facility to participate in implementing the Act. The patients have been involuntarily committed to the department by a court and therefore under the court's jurisdiction. As a result, the patient would request to be released from the custody and care of the Department and this would allow the patient to have access to the end-of-life option through the court process. Further, the court will determine whether a patient is a qualified individual under the Act. This allows the court, and not the Department, to make this decision. Since the patient is within the custody and care of the Department, the Department would find an off-site facility to facilitate the patient's access to the Act.

Section 4602: Record Keeping for End of Life Option Act.

Purpose:

This section provides for how the Department will keep the documents for a patient in regards to the end of life option.

Problem:

The Act requires that if a patient participates in the Act, there are various forms that are required to be completed by different parties.

Rationale:

If the patient is still in the custody and care of the Department, the Department should keep these documents in the patient’s medical files, so the patient has a complete medical file.

ANTICIPATED BENEFITS:

These regulations would ensure that the Department is in compliance with the law. However, the regulations also provide some guidance as to how the Act may be available to the patients of the Department.

NECESSITY:

These regulations are necessary to ensure that the Act is properly implemented. The Act requires that if a provider is not allowing for the Act to be administered on its premises or by its employees, the provider is to state this in policy. Subject to court order, this is the policy that the Department is enacting pursuant to the law.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

These regulations are intended to allow the Department to set forth the policy of the Department under the Act.

Creation or Elimination of Jobs within the State of California

The regulations would not create or eliminate jobs within the State of California. The Act allows providers, if the provider chooses, to provide another end of life option available to a patient who is terminally ill.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The regulations would not create new businesses or eliminate existing businesses. The Department already contracts for hospice services and other services in providing the proper medical care to terminally ill patients. The Act may create new businesses in the state. The Department does not allow for the end of life option under the Act, however, the Act has now created a new option available to every individual in the state, therefore there may be an increase in the aid-in-dying medications for the end of life.

Expansion of Businesses Currently Doing Business within the State of California

The Department may need to have more contractors who provide the spectrum of medical care to terminally ill patients. The Act expands services that health care providers can provide to patients.

Anticipated Benefits of the Regulation

The regulations provide the policy of the Department. The regulations also provide clear direction to the public, employees, and patients as to how a patient may utilize the Act.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS:

The Department has not identified any technical, theoretical, and/or empirical studies, reports or documents related to these regulations.

EVIDENCE SUPPORTING FINDINGS OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS:

These regulations would have no significant statewide adverse economic impact directly affecting businesses. The Department would contract with facilities where the service of the Act is available to the patient, but the Department does not expect that there would be many patients who are eligible. These regulations would not change the contracts in existence for other medical care provided to those patients who are currently terminally ill.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES:

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective and less burdensome to affected private persons and equally effective in implementing the provision of law.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS OR STATUTES:

There is no duplication with federal regulations or statutes. However, Medicare will not reimburse for assisted suicide or euthanasia. However, the Act explicitly states that this is not assisted suicide or euthanasia.