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Colorado Hospital Association

The Colorado End-of-Life Options Act
Frequently Asked Questions
December 2016

CHA has received numerous questions from members regarding the Colorado End-of-Life Options Act ("the Act"). Below, the Association summarizes answers to questions asked most frequently. Please note that the answers provided in this document do not constitute legal advice to CHA members, and hospitals are encouraged to consult legal counsel regarding compliance and facility-specific issues.

GENERAL QUESTIONS

1. **What End-of-Life Options Act materials did CHA develop and where can I find these materials?**

   The Association developed a toolkit with a variety of resources, including: A Hospital Guide to the Colorado End-of-Life Options Act, Model Opt-In and Opt-Out Policies, Educational PowerPoint Presentation, Legal Guidance for Hospitals Opting-Out, and Sample Website Copy for Patient Notification. CHA's End-of-Life Options Act materials are available at www.cha.com/prop106. CHA made revisions to the hospital guide in December 2016, and the updated guide includes revised model policies, among other updates.

2. **Who is required to provide advance written notification to patients and physicians, and what does "advance" mean?**

   In addition to developing a policy regarding medical aid-in-dying, a health care facility is required to provide advance written notification to patients of its policy, regardless of whether the facility chooses to opt-in or opt-out. Additionally, advance written notification to physicians is required should the facility choose to opt-out. The Act, does not provide more specific guidance on the means or content of the notices. Please see the Executive Summary (page 4) of the guide for additional recommendations.

3. **Who can prescribe medical aid-in-dying medication? What about nurse practitioners, physician assistants and our hospital's residents and fellows?**

   A request for medical aid-in-dying medication can only be made or ordered by an "attending physician," which is defined as "a physician who has primary responsibility for the care of a terminally ill individual and the treatment of the individual's terminal illness." Therefore, neither a nurse practitioner nor physician assistant can prescribe medical aid-in-dying medication. Alternatively, if the hospital has a Graduate Medical Education program, the hospital can consider whether residents or fellows may serve as "attending physicians" under the Act.

4. **Is a consulting physician required to be independent from the attending physician?**

   No. The only eligibility requirement of a consulting physician is that they must be "a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a terminally ill individual's illness."

5. **Can an inpatient's personal representative (i.e., guardian, proxy medical decision maker or person designated under a medical durable power of attorney) consent to medical aid-in-dying medications on behalf of the patient?**

   No. Medical aid-in-dying medications can only be prescribed and dispensed to a patient with mental capacity. The patient, not a personal representative, must provide the informed consent and written request. A personal representative would not have authority to make medical treatment decisions on behalf of a patient with mental capacity.

6. **Does the Act require rulemaking by state agencies?**

   Yes. On December 5, 2016, the Colorado Department of Public Health and Environment (CDPHE) proposed emergency rules regarding the collection and reporting of information as required under the Act. The proposed rule requires attending physicians and health care providers to provide CDPHE with key components of the patient's medical record and other information. CHA's comment letter on the proposed rule is available at http://www.cha.com/prop106. This rule will likely be finalized in January 2017 and no other rulemaking is required under the Act.

OPT-IN AND OPT-OUT QUESTIONS

7. **If our hospital opts-in under the Act, and we also own a nursing home, will the opt-in policy carry over to our nursing home?**

   The Act allows a "health care facility" to opt-in or opt-out, and that would include a nursing home. If you have a health care system that includes a nursing home, and the governing body of the nursing home is different than the hospital's governing body, then the opt-in policy would not carry over. The governing body of the nursing home would need to adopt its own policy, but it could be a similar opt-in policy to that adopted by the hospital.

8. **Our hospital opted-in under the Act. An employed physician does not want to participate under the Act. Can the physician refuse?**

   Yes. The Act allows health care providers to choose whether to participate in providing medical aid-in-dying medication to an individual. "Health Care Provider" is defined broadly to include health care facilities and individuals, such as physicians and pharmacists. Individuals can opt-out, even if the hospital opts-in and permits the self-administering of medical aid-in-dying medications on its premises. See Voluntary Participation and Declining to Participate (page 13) of the guide for additional information.

9. **Our hospital opted-out under the Act. An inpatient was recently diagnosed with a terminal illness and has requested medical aid-in-dying medications. Is the hospital required to find an alternate provider who is willing to prescribe and dispense the medications?**

   No. Under the Act, the hospital's only obligation is to transfer, upon request, a copy of the individual's relevant medical records to the new health care provider. It is the patient's responsibility to identify an alternate provider. Please see Declining to Participate (page 13) of the guide for additional information.

10. **Our hospital has made the decision to opt-out. What can our hospital prohibit physicians and other staff from performing?**

    A hospital choosing to opt-out can prohibit a range of activities under the Act, from a minimal prohibition of medical aid-in-dying medications on the facility's premises, to potentially include a broader scope of prohibited activities under the Act. In light of the Act's ambiguities, hospitals choosing to opt-out should consult with their legal counsel, particularly if the hospital wishes to enforce a broader scope of prohibited activities. For further legal analysis on what a hospital choosing to opt-out can prohibit under the Act, see "Non-Participating Hospitals" Memorandum developed by CHA Legal Counsel, available at http://www.cha.com/prop106.

For more information or for questions regarding the Colorado End-of-Life Options Act, contact Amber Burkhart, CHA policy analyst, at amber.burkhart@cha.com or 720.330.6028