Proposition 106: Implementing the Colorado End-of-Life Options Act

NOVEMBER 2016
Disclaimers

CHA did not take a position on Proposition 106 and does not have a formal position on medical aid-in-dying. As such, CHA is neither encouraging or discouraging member hospitals and health systems from facilitating or participating in medical aid-in-dying.

The Association’s objective is to support our members by providing them with sufficient information to make informed decisions and comply with the law’s requirements.

This guidance does not constitute legal advice to CHA members or others. Each hospital should consult with legal counsel on these matters and have legal counsel review any policies proposed as a result of this guidance.
Webinar Overview

- Introduction
  Katherine Mulready, VP of Legislative Policy and Chief Strategy Officer, CHA

- Background: Medical Aid-in-Dying Efforts & Lessons from Other States
  Matt Whitaker, Multi-State Implementation Manager, Compassion and Choices

- What Hospitals Need to Know Now
  Amber Burkhart, Policy Analyst, CHA

- Conclusion, Next Steps, and Q&A Session
  Katherine Mulready, VP of Legislative Policy and Chief Strategy Officer, CHA

Companion tools available at www.cha.com:

- A Hospital Guide to the Colorado End-of-Life Options Act
- Webinar Powerpoint Presentation
Learning Objectives

- At the conclusion of the webinar, participants will understand:
  - The recent history of medical aid-in-dying laws and experiences in other states
  - The basic structure and process for patients seeking medical aid-in-dying under Proposition 106
  - Key decision points and steps that hospitals should address immediately to effectively respond to the requirements of Proposition 106
  - CHA’s next steps as they relate to education and potential legislation regarding medical aid-in-dying
Introduction

• Proposition 106 was passed by Colorado voters in November 2016 with 65 percent voting in support
  • It will be codified in Colorado statutes, C.R.S 25-48-101, et seq.

• It establishes a system for Colorado residents with a terminal illness to request and self-administer aid-in-dying medication from a physician under certain conditions

• Participation by hospitals and physicians is entirely voluntary, but policies to opt-in or opt-out must be in place to ensure they can be enforced

• Hospitals should notify patients and staff of adopted policies

• Implementation Date: Uncertain - December 2016 or January 2017
History & Experiences from Other States

Matt Whitaker, Multi-State Implementation Manager, Compassion and Choices
About Compassion & Choices

C&C is the nation’s oldest, largest and most active nonprofit organization committed to improving care and expanding choice at the end of life.

C&C supports, educates and advocates.
CO Access Campaign

Medical Aid in Dying Authorized
Medical aid in dying is a medical practice in which a terminally ill, mentally capable adult with a prognosis of six months or less to live may request from her or his doctor a prescription for medication which they can choose to self-administer to bring about a peaceful death.
Majority of Americans and Doctors Support Medical Aid in Dying as an Option

- 68-74% of Americans agree with access to medical aid in dying (Gallup 2015, Harris 2014)
- 56% of Colorado Medical Society members agree with access to medical aid in dying (2016)
Colorado End-of-Life Options Act

Coloradans overwhelmingly authorized medical aid in dying on November 8, 2016.
States Where Medical Aid in Dying Is Authorized

- Oregon, 1997, by ballot initiative
- Washington, 2008, by ballot initiative
- Montana, 2009, by court ruling
- Vermont, 2013, through legislation
- California, 2015, through legislation
- Colorado, 2016, by ballot initiative
Colorado End-of-Life Options Act: Eligibility Requirements

- Adult
- Terminally ill
- Prognosis of 6 months or less
- Mentally capable of making informed medical decisions
Diagnosis of People Who Used the Death With Dignity Law in Oregon

Underlying Illness

- Cancer: 100
- Other: 10
- Heart Disease: 10
- ALS: 10
- CLRD: 10
Hospice and Palliative Care Are Improved and Better Utilized

- 92% enrolled in hospice
- 90% died at home
Colorado Access Campaign

Resources:

✓ End-of-Life Options Act website:  
   www.CompassionAndChoices.org/Colorado

● Videos for doctors and patients
● Clinical criteria + fact sheets
● State forms
● Request a Speaker

● **Find Care Tool** that lists facilities that have adopted policies that honor patient choice

✓ Doc2Doc consultation service **800-247-7421**
✓ Pharmacist2Pharmacist consultation service
What Hospitals Need to Know Now

Amber Burkhart, Policy Analyst, CHA
Colorado End-of-Life Options Act: Process Overview

- **Patient Oral Request #1**
  - Patient Oral Request #2 & Written Request
  - 15 Days

- **Attending MD**
  - Fulfills Requirements

- **Consulting MD**
  - Fulfills Requirements

- **Licensed Mental Health Professional**
  - Fulfills Requirements

- **Attending MD**
  - Prescribes Medications

- **CDPHE Reporting Requirements**
  - **Death Certificate Signature**

A patient has the ability to change his or her mind at any point during the process.
What It Means for Hospitals

• Participation by hospitals and physicians is voluntary, but CHA strongly recommends all hospitals adopt a policy governing actions that will occur on the hospital premises
  • Hospitals that opt-in will give the option to patients who choose to take aid-in-dying medication to do so on the hospital premises
  • Hospitals that opt-out can deny a patient’s request to take the aid-in-dying medication on the hospital premises
• In other states with medical aid-in-dying laws, the majority of patients who choose to take medications do so at home – not at a hospital
Policy Considerations for Implementing the Colorado End-of-Life Options Act in Colorado Hospitals

Hospital’s Governing Board Decides Position on the Colorado End-of-Life Options Act

- Yes, we will opt-in
- No, we will opt-out

Opt-In Policy/Procedures should consider:
- Documentation requirements:
  - Copy of prior records
  - On-site documentation
  - Advance directives and DNR
  - Personnel Policies
  - Facility review process
  - Patient assistance process

Written Policy & Procedures

Written Policy & Procedures

Opt-Out Policy/Procedures should consider:
- Response for emergencies and non-compliant situations
- Personnel Policies

Patient/Public Notification

Written Policy & Procedures

Written Policy & Procedures

Education Best Practices Employee/Professional
- Professional/Employee Contracts
- Medical Staff Governing Docs.
- Continuing Medical Education

Notification Best Practices Patient/Public
- Website and patient right locations
- Admissions Paperwork

Employee/Professional Notification

Prop. 106 was passed by CO voters in 2016 with 65% support and will take effect by Jan. 2017.
Whether to Participate: Factors to Consider

• The hospital’s mission and current scope of services offered
• Applicable faith-based and ethical standards that support or preclude medical aid-in-dying
• Resources available to implement the elements of the Act
  • Medical staff members willing to serve as attending physicians to prescribe medications
  • Consulting physicians to evaluate patients
  • Mental health professionals to evaluate mental capacity of patients
• Potential litigation and risk management considerations
Opting In

- Hospitals that opt-in will give the option to patients who choose to take aid-in-dying medication to do so on the hospital premises.

- Policy should address the process and personnel responsibilities for:
  - Ensuring adequate informed consent
  - Documenting reporting requirements and risk management considerations
  - Proper prescribing and administering of medications

- Additional policy considerations include:
  - Ensuring informed consent and documentation
  - Self-administered medication policy
  - Personnel policies
  - Patient services that may be provided

- Provide advance written notification to patients
Opting Out

- Hospitals that opt-out can deny a patient’s request to take the aid-in-dying medication on the hospital premises
  - The law is silent on whether a hospital can prevent an employee, contracted professional, or other provider engaged to practice on-premises from participating in medical aid-in-dying off-premises
  - A hospital can limit an employee’s scope of employment or contracted professional’s scope of performance

- Hospitals should adopt a policy reflecting their opt-out decision. This policy may also address:
  - Prohibiting physicians employed or under contract from prescribing aid-in-dying medications to individuals who intend to use the medication on the hospital’s premises
  - Unplanned situations (e.g., ED admissions following self-administered aid-in-dying medication; patients/staff acting outside the opt-out policy)

- Provide advance written notification to patients and physicians
Notification Requirements

• Patients must be notified of the hospital’s policy, whether the policy is to opt-in or opt-out

• Physicians must be notified of the hospital’s policy if the hospital chooses to opt-out

• Recommendations for Patient/Public Notification:
  • Website
  • Locations where patient rights are posted/available
  • Included in admissions paperwork

• Recommendations for Employees, Contracted Professionals and Staff:
  • Included in employment agreements and contracts with professionals
  • Included in governing documents for medical staff
  • Provided in all-staff emails and through continuing education programs
Conclusion, Q&A
Next Steps

Hospitals
• Develop policies and procedures to enable compliance with the law

Colorado Hospital Association
• Provide technical assistance to members
• Work with partners to consider potential legislation addressing implementation and compliance concerns:
  • Liability and opt-out protections,
  • Clarity of procedural requirements,
  • Adopting best practices from other states

Colorado Medical Board
• Having repealed the aid-in-dying policy in November, consider whether a more limited policy is still necessary (February 2017)

Colorado Department of Public Health and Environment (CDPHE)
• Develop rules for mandated reporting (January 2017)
Q&A

• Questions can be submitted via the chat function on your webinar.
• Questions arising after the webinar can be sent to Amber Burkhart, Policy Analyst, at amber.burkhart@cha.com.
• Facility-specific or legal questions should be addressed in consultation with your hospital’s legal counsel.