What Physicians Need to Know About the New California End of Life Option Act

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On October 5, 2015, the California legislature passed the “End of Life Option Act” (the “Act”), which permits physicians to prescribe an aid-in-dying medication to terminally-ill patients. The Act is set to take effect on June 9, 2016. While health care providers will be obliged to give terminally-ill patients information about their end of life options, including their right to request aid-in-dying medication, provider participation in the Act is completely voluntary. Furthermore, healthcare organizations have a limited ability to actively prohibit their employees and independent contractors from participating in certain end of life activities authorized by the Act.

This blog post will provide physicians with a brief overview of their rights and obligations under the Act. The information herein will be of particular import to medical groups as they navigate service agreements with healthcare partners that wish to opt-out of the Act.

Overview of the Act

To make a request for aid-in-dying medication, the Act requires the patient to be a California resident who has been diagnosed by his or her attending physician as having less than six (6) months to live. The patient must have the capacity to make medical decisions, have the physical and mental ability to self-administer the aid-in-dying medication, and must voluntarily express the wish to receive a prescription for the drug. The Act further permits the requesting patient’s attending physician to inform and counsel the requesting patient in all available end of life options, and permits such physician to prescribe an aid-in-dying medication, provided certain specific conditions are met.

After making his or her diagnosis, an attending physician must refer the patient to a consulting physician who is (i) independent from the attending physician, and (ii) who is qualified by experience of specialty training to confirm the attending physician’s diagnosis, including an assessment of whether the patient has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision regarding aid-in-dying medication.

Physician Participation in the Act is Voluntary

When a physician diagnoses a patient with a terminal illness, the physician is generally required to inform the patient of his or her right to receive counseling regarding end of life options and, at the patient’s request, must provide such information and counseling. However, the Act expressly allows physicians to refuse to provide counseling to patients specifically regarding aid-in-dying medication for reasons of conscience, morality, or ethics (“Conscience Exception”).

Employers May Prohibit Employees From Engaging in End of Life Activities—To An Extent

Importantly, the Conscience Exception also allows healthcare organizations to opt-out of participation in activities authorized by the Act and to, moreover, prohibit its employees and independent contractors from participating in end of life activities authorized by the Act when such persons are:

- On premises owned by, or under the direct control and management of, the prohibiting healthcare
organization (whether as an employer or independent contractor); or

- Acting within the course and scope of any employment by, or contract with, such prohibiting healthcare organization, whether on or off the organization’s premises.

Healthcare organizations that elect to enact prohibitions utilizing the Act’s Conscience Exception must first provide notice of such policy to affected employees and contractors. An employer healthcare organization that fails to provide such notice to an employee cannot enforce its policy against such employee.

**Physicians’ Rights to Provide End of Life Options to Terminally-Ill Patients**

Employer healthcare organizations cannot prohibit end of life activities authorized by the Act if the physician conducts those activities either:

- On premises **not** owned by, or under the direct control and management of the prohibiting employer; or
- While acting **outside** of his/her professional responsibilities with the prohibiting employer.

Additionally, irrespective of any policy or prohibition put forward by an employer healthcare organization, the Act **expressly allows** physicians to perform the following end of life professional services, even if the services are rendered on the premises of the prohibiting employer:

- Diagnose whether a patient has a terminal disease;
- Inform the patient of the prognosis;
- Determine whether the patient has the capacity to make decisions regarding end of life options;
- Provide the patient with information regarding the Act; and
- **Provide the patient with a referral** to another provider for the purposes of participating in end of life activities authorized by the Act, upon the patient’s request.

**Conclusion**

Physicians and medical groups that contract with healthcare organizations should confirm each organization’s policy regarding the Act to ensure that it reflects the rights and obligations outlined herein. Additional guidance—and controversy—is sure to emerge following the June 9 effective date.

*Samuel Gilkeson contributed to this article.*

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