

# How Death with Dignity Laws Work

Death with dignity statutes allow qualified terminally-ill adults to voluntarily request and receive a prescription medication to hasten their death.

As of September 19, 2019, death with dignity statutes are in effect in **California, Colorado, District of Columbia, Hawai'i, Maine, New Jersey, Oregon, Vermont, and Washington.**

In **Montana**, physician-assisted dying is legal by State Supreme Court ruling.

## TALKING TO YOUR PHYSICIAN ABOUT DEATH WITH DIGNITY

*Information in this section has been adopted from a handout by End of Life Washington.*

It is important to discuss your end-of-life wishes with your doctor as early as possible. The benefit of doing this even if you are healthy is that if your doctor does not share your values on this subject, you will have the chance to look for a willing physician while you still have the energy and time to do so.

The best time for this conversation is when you provide your physician with a copy of your advance directive or discuss the use of the Physician Orders for Life-Sustaining Treatment (POLST) form, a non-hospital medical order for people with serious illnesses. If you raise the issue after receiving a terminal diagnosis, your physician may be less receptive.

It is important to have this discussion with your doctor in person. Do not ask their office staff, nurse, or assistant or leave a request on their voice mail. Above all, avoid demanding your physician's assistance. Under death with dignity laws your physician is not required to participate and may have valid reasons for declining.

First, explain to your physician that you believe in being prepared, that you wish to avoid unnecessary suffering at the end of life, and that you would like to make sure that both of you would be on the same page in an end-of-life situation.

You may say something like:

*"I want to live with as much quality as I can for as long as I can. If I am no longer able to find meaning in life after trying all other reasonable options, I would like to have the option of using our state's physician-assisted dying law that allows me to have medication to hasten my inevitable death.*

*"I hope that you will honor my decisions at the end of my life and respect my values, as I respect yours. If you will never be willing to honor my request for a medication to hasten my death according to state law, please tell me now, while I am able to make choices based on that knowledge."*

Then, ask your physician for a yes or no answer to this question:

*"If I were terminally ill and wanted to use our state's death with dignity law, would you be willing to write me a prescription for life-ending medication?"*

If you are diagnosed with a terminal illness and wish to use your state's aid-in-dying law, you may tell your doctor something like:

*"I understand that I have approximately 6 months or less to live and the option to manage the symptoms of my illness in my home with the aid of hospice. I have given lengthy consideration to hastening my inevitable death. Will you honor my request to hasten my death by writing a lethal prescription in accordance with our state's death with dignity law?"*

Regardless of your physician's response, remember to ask him/her to record your request in your medical record; your request would constitute the first oral request under the law (see below).

If your physician seems reluctant to prescribe but seems unopposed to the concept, ask if the physician would be willing to participate as the consulting physician, i.e. the doctor who confirms your diagnosis, prognosis, and mental capacity.

Common responses from physicians and what they may indicate:

- *"I will help you" or "I will be there for you when the time comes."* This may mean "I will refer you to hospice and palliative care," or "I will be sure you are kept comfortable, but I may not write a prescription for life-ending medication."
- *"Let's talk about that when the time comes" or "We can talk later." or "For now, let's focus on treatment."* Physicians who make these kinds of statements are stalling or trying to change the subject. More often than not, these physicians will elect not to participate when the time comes.
- *"I don't know anything about death with dignity."* Advise your physician to visit the website [DeathwithDignity.org](http://DeathwithDignity.org) or give them the toll-free number of End of Life Washington (877) 222-2816, where they can seek more information.
- *"My employer will not allow me to participate."* Some physicians work for Catholic or other

faith-based health care providers that prohibit participation in physician-assisted dying laws. Although the law permits providers to prohibit physicians from participating while on their employer's premises, nothing prevents a physician from participating off the premises. The law also prevents a provider from punishing a physician who does. Many physicians are unaware of these provisions of the law, and even those who are aware may not be comfortable participating under these circumstances.

- *"I don't believe in that" or "I would never do that" or "I'm against that."* If your physician declines to participate, you should evaluate your relationship with that doctor. While it is your physician's right to opt out, you have the option of switching doctors or continuing treatment while seeking another physician willing to honor your end-of-life requests.

## TALKING TO YOUR FAMILY

Every family is different, and many families have strained relations. However, even if there has been little communication for years, the months or weeks before death is a time when many people attempt to open up to each other. It is amazing how many families come around to reestablish communication, and offer support, as they learn what their relative is struggling with.

It is in the best interest of those who will be left behind that you tell your family what you are planning, and give them the option to accept or reject it or to work out personal past differences. This helps those family members cope better after you die, as they have some positive memories.

Even if your family cannot support you or what you are choosing to do, by starting the dialogue you have at least given them the chance to understand and grow. Most families rise to the occasion of help, support, and understanding.

## GOING THROUGH THE PROCESS OF OBTAINING MEDICATIONS

To legally obtain a prescription medication to end your life in a peaceful, humane, and dignified manner under physician-assisted dying statutes, you must first become a qualified patient, meeting a set of stringent requirements.

### ELIGIBILITY

To qualify for a prescription under physician-assisted dying laws, you must be *all* of the below:

- a resident of California, Colorado, District of Columbia, Hawai'i, Maine, New Jersey, Oregon, Vermont, or Washington;
- 18 years of age or older;
- mentally competent, i.e. capable of making and communicating your health care decisions;
- diagnosed with a terminal illness that will, within reasonable medical judgment, lead to death within six months;
- able to self-administer and ingest the prescribed medication.

All of these requirements must be met without exception. Two physicians must determine whether all these criteria have been met.

You will not qualify under aid-in-dying laws solely because of age or disability.

### PROVING RESIDENCY

Legal state residency is a requirement for accessing death with dignity laws. In **California, Colorado, Hawai'i, Oregon, and Washington**, you may prove residency with any or a combination of the following:

- a state issued identification card or driver's license;
- documents showing you rent or own (residential) property in the state;
- a state voter registration;
- a recent state tax return.

In **Maine**, you may use the above as well as documents showing you occupy the location of a dwelling, including received mail, hunting/fishing license, receipt of any public benefit conditioned upon residency, or "any other objective facts tending to indicate [your] place of residence."

In **New Jersey**, proof of renting or owning property is not acceptable, but you can use "any other government record that the attending physician reasonably believes to demonstrate the individual's current residency in this State" in addition to the other three on the list.

In **Vermont**, the law does not specify how residency may be proven. We recommend following the

rules above.

Likewise, the **District of Columbia** Death with Dignity Act does not stipulate ways to prove residency.

However, the D.C. Department of Health has established rules for patients to prove residency, specifically by submitting any two (2) of the following original documents that include a valid address in the District of Columbia:

- recent utility bill ("recent" being within the past 60 days in this and all other instances below);
- recent telephone bill;
- deed, mortgage, or settlement agreement;
- unexpired lease or rental agreement;
- recent property tax bill or tax assessment;
- unexpired homeowner's or renter's insurance policy;
- recent letter with picture from the Court Services and Offender Supervision Agency or D.C. Department of Corrections;
- DMV proof of residency form and a copy of unexpired D.C. Driver license or D.C. identification card;
- bank, credit union, credit card, or investment account statement;
- piece of official mail received from any government agency;
- recent form from a social service provider;
- recent medical bill;
- recent student loan statement;
- recent home line of equity statement;
- recent car or personal loan statement; or
- recent home security system bill.

The attending physician determines whether you have adequately established residency.

There is no minimum length-of-residency requirement. You must simply be able to prove you are a current, bona fide resident of one of these states or the District of Columbia.

## OVERVIEW OF PHYSICIAN-ASSISTED DYING STATUTES

Death with dignity laws clearly outline the process by which qualified individuals may obtain life-ending medications.

It is up to eligible patients and their doctors to implement these laws on an individual basis; there are no government programs that will provide assistance. However, the Department of Health in each state monitors the law. Compliance protects you, your family members, and your physician from criminal prosecution.

Participation in death with dignity laws is voluntary. No one is obligated to use these laws. There are no lists of physicians who prescribe medications under physician-assisted dying laws.

The laws only stipulate the waiting period(s). Generally, it may take at least 3–4 weeks to go through the process from the first oral request to filling the prescription.

### FIRST ORAL REQUEST

You may make the initial oral request for medication under aid-in-dying laws at the time of your choosing; many people make the request when discussing their end-of-life options with their physician.

The physician to whom you make your request ("attending physician") must be licensed in the state in which you are making the request and the request must take place on that state's territory.

You can rescind the request at any time in the process.

Your attending physician must confirm you meet all of the eligibility criteria. Your physician must also inform you of alternatives, including palliative care, hospice and pain management options, and ask that you notify your next-of-kin of the prescription request.

A second, consulting physician must confirm the diagnosis, prognosis, and your mental competence.

If either physician determines that your judgment is impaired in any way, e.g. by a mental illness or depression, they must refer you for a psychological or psychiatric evaluation.

In **Hawaii** the mental health evaluation is mandatory for all patients requesting medications under the law.

### FIRST WAITING PERIOD

If your first oral request is authorized, you must wait a minimum of 15 (fifteen) days to make the second oral request. In **Hawaii**, the waiting period is 20 (twenty) days.

## SECOND ORAL REQUEST

You may make your second oral request at any time after the 15-day waiting period (20-day waiting period in Hawaii).

## WRITTEN REQUEST

You can make the written request to your attending physician at any time following the first oral request, using the statutory form included in your state's aid-in-dying law.

The written request must be witnessed by two individuals, at least one of whom is not related to you, entitled to any portion of your estate, or an employee of the health care facility caring for you. Your physician is not eligible to be a witness.

As with both oral requests, you can rescind the written request at any time.

Keep a copy of the written request for your records.

In **California, Colorado, Hawaii, Maine, Oregon, Vermont, and Washington** it is recommended that you only complete and sign the written request after both physicians have confirmed you qualify and submitted their respective paperwork.

In the **District of Columbia** the requirement is to submit the written request *after* the first and *before* the second oral request.

In **New Jersey**, you can make the written request at the time of making the first oral request or any time thereafter.

## SECOND WAITING PERIOD (DC, OR, VT, WA ONLY)

Under the **District of Columbia, Hawaii, Maine, New Jersey, Oregon, Vermont, and Washington** statutes, the physician must wait 48 hours from the time of receiving the written request to write the prescription.

There is no such waiting period in California and Colorado.

## PRESCRIPTION

After you complete all of the above steps, your physician will write the prescription.

You will not receive your prescription in your hands. The physician may either dispense the medication to you themselves or deliver the prescription to a pharmacy in person or by mail. In **Vermont**, fax is also acceptable; in **California, Colorado, Hawai'i, Maine, and New Jersey**, electronic delivery is acceptable as well; in the **District of Columbia** both fax and electronic transmission are also allowed.

You may fill the prescription at any time after the final waiting period, if applicable, or you may choose not to fill it at all. You, your physician, or your express designee may pick up the medications from the pharmacy.

## DECIDING WHETHER TO HASTEN YOUR DEATH

### NOT USING THE MEDICATION

Nothing in death with dignity statutes tells a patient that they must take the medication after going through all the steps to qualify.

Even if you qualify and have prescriptions written or even the medications in your possession, you never have to use the medicine.

After the prescription is written, you have a choice to fill the prescription or not to fill it. You can leave the prescription at the pharmacy until you decide that you want to make this choice, at the time that is right for you.

If you do obtain the medications, you can decide to use the medicine at any time or to never use it.

It is your choice to decide if you ever want to fill and use your prescription. The aid-in-dying law is all about giving you this choice as a state resident.

About one third of qualified terminally ill people decide that they do not want to hasten their death using the prescription. The prescription provides them with peace of mind, knowing if their symptoms get too bad, they can choose to take the medication.

### KNOWING THE RIGHT TIME TO TAKE THE MEDICATION

You are the only person who can decide if and when you want to take the prescribed medication. This is a decision that is often made by conferring with your family, as they are also aware of the changes happening to you as your disease progresses.

A good time to take the medication is when the quality of life has decreased to an unacceptable or intolerable level, and all that is left are days of suffering. The suffering can occur on many levels: pain with every movement, the indignity of having someone you love change your diapers and position your body for you, or the recognition that you are becoming so weak that you might not be able to swallow 4 ounces of liquid for long. It can also include the fear of total loss of control of your life.

Your family will probably be happy to watch with you, monitor your decreasing ability to function, and help you make the decision about when to take the prescribed medication, as your time gets shorter. You will know when the time is right; if the time is never right, that is fine too. A significant number of patients qualify for the life-ending medication but never ingest it.

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## **CALIFORNIA AND HAWAI'I ONLY: COMPLETING THE FINAL ATTESTATION FORM**

The California End of Life Option Act and Hawai'i Our Care Our Choice Act require that those wishing to take the medication prescribed in accordance with it complete the Final Attestation Form 48 hours prior to taking the medication.

The Final Attestation Form is part of each Act.

## **BEING UNABLE TO TAKE THE MEDICATION**

There are three scenarios in which you may be unable to take the medication after it has been prescribed:

- Your disease progresses to coma or death.
- Tumors in your brain or certain metabolic problems affect your brain function. If you are experiencing severe and increased confusion, and you have lost the capacity to understand and make decisions, you will no longer qualify to take the medication. On the day you take the prescribed medication, you need to be able to ask for it, and be cognizant of what it is for.
- You are unable to swallow the 4 ounces of liquid within 2 minutes or less (see below). This might occur with progressive overwhelming weakness from end stage illness or from a neurological disease like ALS.

## TAKING THE MEDICATION

The most frequently prescribed medicine is a large dose of a sleeping medication, most commonly a barbiturate, in powder form. It is mixed with about 4 ounces of liquid before you, the person for whom it is prescribed, drink it. The full amount needs to be ingested within two minutes. Because the medication has a rather bitter taste, have a small glass of a delicious tasting liquid handy to cleanse your palate after drinking the entire amount of life-ending medication.

Most patients fall asleep peacefully about 10 minutes after drinking the life ending medication, and die in 1–3 hours. In about 5 percent of patients, it takes longer than 6 hours to die, but they sleep comfortably the whole time, until death ensues.

## CONSIDERING YOUR INSURANCE

As long as you go through all the steps required by the law to obtain the medication, your life insurance benefits should be unaffected. The cause of your death on your death certificate, for the documentation by the life insurance company, will be listed as the disease that your doctors expect will cause your death in the next weeks or months.

## USING THE TIME BETWEEN QUALIFYING AND USING THE PRESCRIPTION

While you are waiting, don't forget to live your life and look for a little bit of joy in every day. Dying is not for the faint of heart. Your disease has taken away your control over life in almost every aspect: eating, sleeping, pain, loss of ability, money, dignity, you name it. This can be a very discouraging time.

If your state's physician-assisted death law seems to offer you a little control over your death, and you think you might want that choice, then it is your legal right. You can begin the process, as soon as the law goes into effect.

However, during the days, weeks, months you need to wait before you can accomplish this, remember that you do have some control left:

- You do have the ability to find some joy, or beauty, or a moment without pain, in every day.
- You do have the ability to thank those who are helping you through this time.
- You do have the time to say all the things that other people in your life need to hear before you die.
- You might even have time for a couple of the items on your bucket-list.

Use this time well. People in car-crash deaths never get to tie up the loose ends or say final goodbyes. Every day has at least one precious moment. We hope you find many.

## EXPLORING OTHER END-OF-LIFE OPTIONS IF YOU DO NOT QUALIFY

Physician-assisted dying is only one of end-of-life options available. Under certain circumstances you may wish to explore the following additional options, even in states without such legislation:

- Not starting new treatment(s) or stopping current treatment(s)
- Palliative sedation
- Voluntary stopping eating and drinking

## ADDITIONAL RESOURCES

Find full texts of each death with dignity statute, forms for physicians / pharmacists / patients, and other information at [DeathwithDignity.org/Learn/Access](https://DeathwithDignity.org/Learn/Access).