

Death with Dignity: Background Materials

What is Death with Dignity/Assisted Suicide/Aid in Dying?:

Although the practice has many names, in general most policies have the same basic guidelines in place to safeguard both patients seeking to receive the medication and doctors prescribing the medication.

States with death with dignity laws all include qualifying criteria:

- a competent adult over the age of 18 can request a prescription to end his or her life only if diagnosed as terminally ill and likely to die within six months,
- the request for a prescription from licensed physicians must be made both in writing and orally,
- the individual must be able to self-administer the medication,
- the individual must be of sound mind and capable of clear communication,
- the laws often require a series of requests and waiting periods to guard against abuse. Patients diagnosed with mental illness and people with disabilities are ineligible.

Background in New York State:

The New York State legislature is considering legislation to allow for death with dignity in New York State. The legislation is modeled after laws in Oregon and other states. Currently 6 states and Washington DC have authorized the procedure either through court rulings, referendum, or state legislation.

- Oregon in 1994 by ballot initiative
- Washington in 2008 by ballot initiative
- Montana in 2008 by court ruling
- Vermont in 2013 through legislation
- California in 2015 through legislation
- Colorado in 2016 through ballot initiative
- Washington, DC's Death with Dignity law went into effect on February 18, 2017.

Over the years, our state legislature has considered several different bills that would legalize death with dignity in New York State. The most updated proposal, **A.2383 (Paulin)/S.3151 (Savino)**.

The New York legislation includes the following provisions:

- Only a qualified terminally ill, mentally capable adult may obtain a prescription from their physician for medication that they can self-administer.
- Terminal illness and six month or fewer prognoses must be confirmed by two doctors.
- If either doctor has concerns about the patient's capacity to make an informed decision, they must make a referral to a mental health professional and medication can't be prescribed until capacity is determined.
- The person requesting medical aid in dying must be advised of all their end-of-life options, including the right to rescind the request.
- Two people must witness the written request, one of whom can't be someone who stands to benefit from the estate; neither the doctor nor the professional who may provide competency determination can witness.

- Prescribing doctors must comply with extensive medical record documentation requirements & make records available to Department of Health.
- Immunity from civil & criminal penalties and professional malpractice for those who comply with all aspects of the law.
- Criminal law prosecution for those who violate the law.
- Life insurance payments can't be denied to the families of those who use the law.
- No physician or facility can be required to participate; no patient can be coerced or forced to choose aid in dying. Protections against coercion are including, allowing for felony penalties for coercing or forging a request.
- Unused medication must be disposed of according to Department of Health guidelines.
- Department of Health is required to issue publicly available annual report

This legislation has received support from the organizations that support legalizing death with dignity in New York State. They feel this legislation is comprehensive and has adequate safeguards in place to ensure both patients and doctors are not pressured or deterred in utilizing the program. They feel that this law will allow for peaceful and humane death for those seeking to use end of life drugs.

Many professional associations support aid in dying including the American Public Health Association, American Medical Women's Association, National Association of Social Workers, the Statewide Senior Action Council of NY, and the New York State Academy of Family Physicians.

There has been some turbulent debate surrounding the policy in New York. Several disability organizations and religious groups have come out in opposition to the legislation. These groups argue that handicapped individuals could be pressured or tricked into taking the end of life drugs. Some disability groups feel that individuals with mental disabilities may not understand what they are volunteering for.

Groups who are opposed to death with dignity include the Archdiocese, the Catholic Conference, the Center for Disability Rights, and the New York Association on Independent Living.

New York State Court Case: Myers v. Schneiderman:

In 2015, three terminally ill patients filed a suit against New York State to allow their doctors to administer life ending medication. "The complaint assert[ed] that the physician plaintiffs have been deterred by the relevant provisions of the Penal Law from providing aid-in-dying to terminally ill and mentally competent persons who have no chance of recovery and for whom medicine cannot offer any hope other than some degree of symptomatic relief. They assert[ed] that the authorities wrongly consider aid-in-dying to be "assisted suicide," but that in fact it is starkly distinct from it."¹

The Attorney General made a motion to dismiss the case stating that the complaints were not justiciable and that the plaintiffs did not have a standing to sue. The judge dismissed the case because he rejected the plaintiff's assertion that the penal code should not apply to aid in dying.

The plaintiffs appealed the case to the New York Court of Appeals. At the beginning of September the Appeals Court dismissed the case ².

¹ Myers v Schneiderman <http://law.justia.com/cases/new-york/appellate-division-first-department/2016/151162-15-310.html>

² "State's highest court rejects pro-aid in dying arguments" Matthew Hamilton. Albany Times Union. September 7 2017. <http://www.timesunion.com/7day-state/article/State-s-highest-court-rejects-aid-in-dying-case-12179660.php>

Arguments in Favor of Death With Dignity:

The argument for autonomy in end-of-life decision-making advocates for a person being able to determine how she/he lives and dies. Many individuals want to be involved in as many aspects of their end-of-life decisions as possible, including having the option of determining when he/she will die. Advocates for autonomy see no reason why they shouldn't have the right to die "on their own terms," a phrase made famous by Bill Moyers in his 2000 PBS television mini-series on the end of life, "On Our Own Terms: Moyers on Dying."

Relief from pain and suffering is the other primary argument for the legalization of Death with Dignity. One's quality of life is diminished by pain and suffering in various forms, including mental anguish, loss of physical capabilities and dignity. This argument is often advanced by people who, having personally witnessed the agonizing death of a friend or family member, do not want themselves or anyone else to suffer in a similar situation. Palliative care and hospice can be very effective in managing pain and other symptoms at the end of life, but these efforts are not effective in all cases, and common methods of pain control can have unwanted side effects like reduced cognition.

These two arguments, autonomy and relief from pain and suffering can be viewed as the necessary criteria to safeguard against abuse. The patient must view accelerating death as the only acceptable way to alleviate his or her intolerable pain and suffering.

Arguments in Opposition of Aid in Dying:

Most people have a strong conviction about the wrongness of killing. If this conviction were extended to every life and death situation, regardless of circumstance, it would prohibit support of any assistance in dying, even when death is desired by a competent, terminally ill adult to alleviate pain and suffering. Furthermore, it would also prohibit capital punishment and killing in self-defense, in defense of innocent others, and in war.

Results of other states:

California began implementing their law in June of 2016. The California law requires that two doctors agree that the patient has an incurable illness with no more than six months to live and has the mental capacity to make such a decision. California's Department of Public Health analyzed their program after six months. In those six months, a total of 191 patients had requested the life ending drugs, but only 111 patients used them³. Of those 191, 21 died due to their underlying illness, and 59 had undetermined outcomes. The Los Angeles Times compared California and Oregon during that time frame to analyze how similar or different their demographics appeared.

³ "California End of Life Option Act 2016 Data Report", California Department of Health.
<https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/CDPH%20End%20of%20Life%20Option%20Act%20Report.pdf>

Comparing California's experience to Oregon's⁴

California, June 2016 — December 2016	Oregon, January 2016 — December 2016
<ul style="list-style-type: none"> • 59% of those who died using a lethal prescription had cancer. • 46% of those who died were male • 90% who died were white, 3% Latino and 5% Asian • 58% who died had a bachelor's degree or higher • 57% who died had Medicare, Medicaid or another type of government insurance; 31% had private insurance; 4% were uninsured • The rate of lethal prescription deaths was 6 per 10,000 total deaths in the state. 	<ul style="list-style-type: none"> • 79% of those who died using a lethal prescription had cancer. • 54% of those who died were male • 96% who died were white, 1.5% Latino and 1.5% Asian • 50% who died had a bachelor's degree or higher • 70% who died had Medicare, Medicaid or another type of government insurance; 30% had private insurance; fewer than 1% were uninsured. • The rate of lethal prescription deaths was 37 per 10,000 total deaths in the state.

In Oregon's first year of implementation in 1994, they reported only 15 physician-assisted deaths. In 2016 a total of 204 patients had been issued the drugs with 114 taking the drugs, 36 not taking them, and 54 with an unknown ingestion status⁵.

One of the unforeseen benefits in California since implementing death with dignity has been better end of life care whether or not patients choose to utilize the policy. Health care providers, advocacy organization, and families of patients have all reported an improvement in the care of patients⁶. Before the legislation, most patients had few options and were often unaware of the options for hospice care that were available to them. Now these same patients are receiving guidance and care from social workers, doctors, and even religious organizations who are working to ensure they know all possible options available to them.

More information on other states who participate in aid in dying are included in the Utah League's study and the materials packet.

⁴ "111 terminally ill patients took their own lives in first 6 months of California right-to-die law" Soumya Karlamangla. Los Angeles Times. June 27 2017. Web address: <http://www.latimes.com/local/lanow/la-me-ln-end-of-life-act-20170627-htlmstory.html>

⁵ "Oregon Death With Dignity Act Data Summary 2016" Oregon Health Authority. <http://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year19.pdf>

⁶ "There's an unforeseen benefit to California's physician-assisted death law" Soumya Karlamangla. Los Angeles Times. Aug 21 2017. Web address: <http://www.latimes.com/health/la-me-end-of-life-care-20170821-htlmstory.html>

Attached Materials

- A. Utah LWV Position on Aid in Dying
- B. Utah LWV Study on Aid in Dying
- C. Death With Dignity Legislation in NY
- D. California CDPH End of Life Option Act Report
- E. Oregon Death With Dignity Act Participation Summary and Trends 2016
- F. FAQs about Aid in Dying 2017 Compassion and Choices Support
- G. Fact Sheet Aid in Dying in US Compassion and Choices Support
- H. Suicide Prevention Initiatives Statement Opposition
- I. Primer on Assisted Suicide Opposition Report
(Only sent electronically due to size of report, you can find report here and on League website:
<https://dredf.org/wp-content/uploads/2017/04/a-primer-on-assisted-suicide-laws.pdf>)
- J. NY Association on Independent Living Article Opposition
- K. Op-Ed by Gene Hughes Support
- L. Concurrence Response Form