

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE APRIL 14, 2015

AMENDED IN SENATE MARCH 17, 2015

SENATE BILL

No. 128

**Introduced by Senators Wolk and Monning
(Principal coauthors: Senators Jackson and Leno)**

(Principal coauthors: Assembly Members Alejo and Eggman)

**(Coauthors: Senators Block, Hall, Hancock, Hernandez, Hill,
McGuire, and Wieckowski)**

(Coauthors: Assembly Members Chu, Cooper, Frazier, Cristina Garcia,
Low, Quirk, Rendon, and Mark Stone)

January 20, 2015

An act to add Part 1.85 (commencing with Section 443) to Division 1 of the Health and Safety Code, relating to end of life.

LEGISLATIVE COUNSEL'S DIGEST

SB 128, as amended, Wolk. End of life.

Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.

This bill would enact the End of Life Option Act authorizing an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to make a request for a drug prescribed pursuant to these provisions for the purpose of ending his or her life. The bill would establish the procedures for making these requests. The bill would also

establish the forms to request an aid-in-dying drug and, under specified circumstances, an interpreter declaration to be signed subject to penalty of perjury, thereby imposing a crime and state-mandated local program. This bill would require specified information to be documented in the individual's medical record, including, among other things, all oral and written requests for an aid-in-dying drug.

This bill would prohibit a provision in a contract, will, or other agreement from being conditioned upon or affected by a person making or rescinding a request for the above-described drug. The bill would prohibit the sale, procurement, or issuance of any life, health, or accident insurance or annuity policy, health care service plan, contract, or health benefit plan, or the rate charged for any policy or plan contract, from being conditioned upon or affected by the request. The bill would prohibit an insurance carrier from providing any information in communications made to an individual about the availability of an aid-in-dying drug absent a request by the individual, his or her attending physician at the behest of the individual, or the individual's designee. The bill would also prohibit any communication from containing both the denial of treatment and information as to the availability of aid-in-dying drug coverage.

This bill would provide immunity from civil, criminal, administrative, employment, or contractual liability or professional disciplinary action for participating in good faith compliance with the act, and would specify that the immunities and prohibitions on sanctions of a health care provider are solely reserved for conduct provided for by the bill. The bill would ~~provide that~~ *make* participation in activities authorized pursuant to ~~this bill shall be voluntary.~~ *its provisions voluntary, and would make health care providers immune from liability for refusing to participate in activities authorized pursuant to its provisions.* The bill would authorize a health care provider to prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this act while on the premises owned or under the management or direct control of that prohibiting health care provider, or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

This bill would make it a felony to knowingly alter or forge a request for drugs to end an individual's life without his or her authorization or to conceal or destroy a withdrawal or rescission of a request for a drug, if it is done with the intent or effect of causing the individual's death.

The bill would make it a felony to knowingly coerce or exert undue influence on an individual to request a drug for the purpose of ending his or her life or to destroy a withdrawal or rescission of a request. By creating a new crime, the bill would impose a state-mandated local program. The bill would provide that nothing in its provisions is to be construed to authorize ending a patient's life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute, among other things, suicide or homicide.

This bill would require the State Public Health Officer to adopt regulations establishing additional reporting requirements for physicians and pharmacists to determine the use of, and compliance with, the act, and would require the State Public Health Officer to annually review a sample of certain records and the State Department of Public Health to make a statistical report of the information collected.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Part 1.85 (commencing with Section 443) is
2 added to Division 1 of the Health and Safety Code, to read:

3

4 PART 1.85. END OF LIFE OPTION ACT

5

6 443. This part shall be known and may be cited as the End of
7 Life Option Act.

8 443.1. As used in this part, the following definitions shall apply:

9 (a) "Adult" means an individual 18 years of age or older.

1 (b) “Aid-in-dying drug” means a drug determined and prescribed
2 by a physician for a qualified individual, which the qualified
3 individual may choose to self-administer to bring about his or her
4 death due to a terminal disease.

5 (c) “Attending physician” means the physician who has primary
6 responsibility for the health care of an individual and treatment of
7 the individual’s terminal disease.

8 (d) “Capacity to make medical decisions” means that, in the
9 opinion of an individual’s attending physician, consulting
10 physician, psychiatrist, or psychologist, pursuant to Section 4609
11 of the Probate Code, the individual has the ability to understand
12 the nature and consequences of a health care decision, the ability
13 to understand its significant benefits, risks, and alternatives, and
14 the ability to make and communicate an informed decision to health
15 care providers, including communication through a person familiar
16 with the individual’s manner of communicating, if that person is
17 available.

18 (e) “Consulting physician” means a physician who is
19 independent from the attending physician and who is qualified by
20 specialty or experience to make a professional diagnosis and
21 prognosis regarding an individual’s terminal disease.

22 (f) “Department” means the State Department of Public Health.

23 (g) “End of Life Option Act Checklist” means a checklist
24 identifying each and every requirement that must be fulfilled by
25 a health care provider to be in good faith compliance with the End
26 of Life Option Act should the health care provider choose to
27 participate.

28 (h) “Health care provider” or “provider of health care” means
29 any person licensed or certified pursuant to Division 2
30 (commencing with Section 500) of the Business and Professions
31 Code; any person licensed pursuant to the Osteopathic Initiative
32 Act or the Chiropractic Initiative Act; any person certified pursuant
33 to Division 2.5 (commencing with Section 1797) of this code; and
34 any clinic, health dispensary, or health facility licensed pursuant
35 to Division 2 (commencing with Section 1200) of this code.

36 (i) “Informed decision” means a decision by an individual with
37 a terminal disease to request and obtain a prescription for a drug
38 that the individual may self-administer to end the individual’s life,
39 that is based on an understanding and acknowledgment of the

1 relevant facts, and that is made after being fully informed by the
2 attending physician of all of the following:

3 (1) The individual’s medical diagnosis and prognosis.

4 (2) The potential risks associated with taking the drug to be
5 prescribed.

6 (3) The probable result of taking the drug to be prescribed.

7 (4) The possibility that the individual may choose not to obtain
8 the drug or may obtain the drug but may decide not to ingest it.

9 (5) The feasible alternatives or additional treatment
10 opportunities, including, but not limited to, comfort care, hospice
11 care, palliative care, and pain control.

12 (j) “Medically confirmed” means the medical diagnosis and
13 prognosis of the attending physician has been confirmed by a
14 consulting physician who has examined the individual and the
15 individual’s relevant medical records.

16 (k) “Mental health specialist assessment” means one or more
17 consultations between an individual and a mental health specialist
18 for the purpose of determining that the individual has the capacity
19 to make medical decisions and is not suffering from impaired
20 judgment due to a mental disorder.

21 (l) “Mental health specialist” means a psychiatrist or a licensed
22 psychologist.

23 (m) “Physician” means a doctor of medicine or osteopathy
24 currently licensed to practice medicine in this state.

25 (n) “Public place” means any street, alley, park, public building,
26 any place of business or assembly open to or frequented by the
27 public, and any other place that is open to the public view, or to
28 which the public has access.

29 (o) “Qualified individual” means an adult who has the capacity
30 to make medical decisions and is a resident of California and has
31 satisfied the requirements of this part in order to obtain a
32 prescription for a drug to end his or her life.

33 (p) “Self-administer” means a qualified individual’s affirmative,
34 conscious, and physical act of *administering and* ingesting the
35 aid-in-dying drug to bring about his or her own death.

36 (q) “Terminal disease” means an incurable and irreversible
37 disease that has been medically confirmed and will, within
38 reasonable medical judgment, result in death within six months.

39 443.2. (a) A qualified individual who is an adult with the
40 capacity to make medical decisions and with a terminal disease

1 may make a request to receive a prescription for an aid-in-dying
2 drug if all of the following conditions are satisfied:

3 (1) The individual's attending physician has diagnosed the
4 individual with a terminal disease.

5 (2) The individual has voluntarily expressed the wish to receive
6 a prescription for an aid-in-dying drug.

7 (3) The individual is a resident of California and is able to
8 establish residency through any of the following means:

9 (A) Possession of a California driver license or other
10 identification issued by the State of California.

11 (B) Registration to vote in California.

12 (C) Evidence that the person owns or leases property in
13 California.

14 (D) Filing of a California tax return for the most recent tax year.

15 (4) The individual documents his or her request pursuant to the
16 requirements set forth in Section 443.3.

17 (5) The individual has the physical and mental ability to
18 self-administer the aid-in-dying drug.

19 (b) A person shall not be considered a "qualified individual"
20 under the provisions of this part solely because of age or disability.

21 (c) A request for a prescription for an aid-in-dying drug under
22 this part shall be made solely and directly by the individual
23 diagnosed with the terminal disease and shall not be made on behalf
24 of the patient, including, but not limited to, through a power of
25 attorney, an advance health care directive, a conservator, health
26 care agent, surrogate, or any other legally recognized health care
27 decisionmaker.

28 443.3. (a) An individual seeking to obtain a prescription for
29 an aid-in-dying drug pursuant to this part shall submit two oral
30 requests, a minimum of 15 days apart, and a written request to his
31 or her attending physician. The attending physician shall directly,
32 and not through a designee, receive all three requests required
33 pursuant to this section.

34 (b) A valid written request for an aid-in-dying drug under
35 subdivision (a) shall meet all of the following conditions:

36 (1) The request shall be in substantially the form described in
37 ~~Section 443.9.~~ 443.10.

38 (2) The request shall be signed and dated, in the presence of
39 two witnesses in accordance with paragraph (3), by the individual
40 seeking the aid-in-dying drug.

(3) The request shall be witnessed by at least two other adult persons who, in the presence of the individual, shall attest that to the best of their knowledge and belief that the individual is all of the following:

(A) A person who has the capacity to make medical decisions.

(B) Acting voluntarily.

(C) Not being coerced to make or sign the request.

(c) Only one of the two witnesses at the time the written request is signed may:

(1) Be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the individual's estate upon death.

(2) Own, operate, or be employed at a health care facility where the individual is receiving medical treatment or resides.

(d) The attending physician, consulting physician, or mental health specialist of the individual shall not be one of the witnesses required pursuant to paragraph (3) of subdivision (b).

443.4. (a) An individual may at any time withdraw or rescind his or her request for an aid-in-dying drug, or decide not to ingest an aid-in dying drug, without regard to the individual's mental state.

(b) A prescription for an aid-in-dying drug provided under this part may not be written without the attending physician directly, and not through a designee, offering the individual an opportunity to withdraw or rescind the request.

443.5. (a) Before prescribing an aid-in-dying drug, the attending physician shall do all of the following:

(1) Make the initial determination of all of the following:

(A) (i) Whether the requesting adult has the capacity to make medical decisions.

(ii) If there are indications of a mental disorder, the physician shall refer the individual for a mental health specialist assessment.

(iii) If a mental health specialist assessment referral is made, no aid-in-dying drugs shall be prescribed until the mental health specialist determines that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

(B) Whether the requesting adult has a terminal disease.

1 (C) Whether the requesting adult has voluntarily made the
2 request for an aid-in-dying drug pursuant to Sections 443.2 and
3 443.3.

4 (D) Whether the requesting adult is a qualified individual
5 pursuant to subdivision (m) of Section 443.1.

6 (2) Confirm that the individual is making an informed decision
7 by discussing with him or her all of the following:

8 (A) His or her medical diagnosis and prognosis.

9 (B) The potential risks associated with ingesting the requested
10 aid-in-dying drug.

11 (C) The probable result of ingesting the aid-in-dying drug.

12 (D) The possibility that he or she may choose to obtain the
13 aid-in-dying drug but not take it.

14 (E) The feasible alternatives or additional treatment options,
15 including, but not limited to, comfort care, hospice care, palliative
16 care, and pain control.

17 (3) Refer the individual to a consulting physician for medical
18 confirmation of the diagnosis and prognosis, and for a
19 determination that the individual has the capacity to make medical
20 decisions and has complied with the provisions of this part.

21 (4) Confirm that the qualified individual's request does not arise
22 from coercion or undue influence by another person by discussing
23 with the qualified individual, outside of the presence of any other
24 persons, *except for an interpreter as required pursuant to this part*,
25 whether or not the qualified individual is feeling coerced or unduly
26 influenced by another person.

27 (5) Counsel the qualified individual about the importance of all
28 of the following:

29 (A) Having another person present when he or she ingests the
30 aid-in-dying drug prescribed pursuant to this part.

31 (B) Not ingesting the aid-in-dying drug in a public place.

32 (C) Notifying the next of kin of his or her request for an
33 aid-in-dying drug. A qualified individual who declines or is unable
34 to notify next of kin shall not have his or her request denied for
35 that reason.

36 (D) Participating in a hospice program.

37 (E) Maintaining the aid-in-dying drug in a safe and secure
38 location until the time that the qualified individual will ingest it.

39 (6) Inform the individual that he or she may withdraw or rescind
40 the request for an aid-in-dying drug at any time and in any manner.

1 (7) Offer the individual an opportunity to withdraw or rescind
2 the request for an aid-in-dying drug before prescribing the
3 aid-in-dying drug.

4 (8) Verify, immediately prior to writing the prescription for
5 aid-in-dying drug, that the qualified individual is making an
6 informed decision.

7 (9) Confirm that all requirements are met and all appropriate
8 steps are carried out in accordance with this part before writing a
9 prescription for an aid-in-dying drug.

10 (10) Fulfill the record documentation required under Sections
11 443.7 and ~~443.17~~: 443.18.

12 (11) Complete the End of Life Option Act Checklist and include
13 it in the individual's medical record.

14 (b) If the conditions set forth in subdivision (a) are satisfied,
15 the attending physician may deliver the aid-in-dying drug in any
16 of the following ways:

17 (1) Dispensing the aid-in-dying drug directly, including ancillary
18 medication intended to minimize the qualified individual's
19 discomfort, if the attending physician meets all of the following
20 criteria:

21 (A) Is authorized to dispense medicine under California law.

22 (B) Has a current United States Drug Enforcement
23 Administration (USDEA) certificate.

24 (C) Complies with any applicable administrative rule or
25 regulation.

26 (2) With the qualified individual's written consent, contacting
27 a pharmacist, informing the pharmacist of the prescriptions, and
28 delivering the written prescriptions personally, by mail, or
29 electronically to the pharmacist, who may dispense the drug to the
30 qualified individual, the attending physician, or a person expressly
31 designated by the qualified individual and with the designation
32 delivered to the pharmacist in writing or verbally.

33 (c) Delivery of the dispensed drug to the qualified individual,
34 the attending physician, or a person expressly designated by the
35 qualified individual may be made by personal delivery, or, with a
36 signature required on delivery, by United Parcel Service, United
37 States Postal Service, Federal Express, or by messenger service.

38 443.6. Prior to a qualified individual obtaining an aid-in-dying
39 drug from the attending physician, the consulting physician shall
40 perform all of the following:

1 (a) Examine the individual and his or her relevant medical
2 records.

3 (b) Confirm in writing the attending physician's diagnosis and
4 prognosis.

5 (c) Determine that the individual has capacity to make medical
6 decisions, is acting voluntarily, and has made an informed decision.

7 (d) If there are indications of a mental disorder, the consulting
8 physician shall refer the individual for a mental health specialist
9 assessment.

10 (e) Fulfill the record documentation required under this part.

11 *443.7. Upon referral from the attending or consulting physician*
12 *pursuant to this part, the mental health specialist shall:*

13 (a) *Examine the qualified individual and his or her relevant*
14 *medical records.*

15 (b) *Determine that the individual has the mental capacity to*
16 *make medical decisions, act voluntarily, and make an informed*
17 *decision.*

18 (c) *Determine that the individual is not suffering from impaired*
19 *judgment due to a mental disorder.*

20 (d) *Fulfill the record documentation requirements of this part.*

21 ~~443.7.~~

22 *443.8. All of the following shall be documented in the*
23 *individual's medical record:*

24 (a) All oral requests for aid-in-dying drugs.

25 (b) All written requests for aid-in-dying drugs.

26 (c) The attending physician's diagnosis and prognosis, and the
27 determination that a qualified individual has the capacity to make
28 medical decisions, is acting voluntarily, and has made an informed
29 decision, or that the attending physician has determined that the
30 individual is not a qualified individual.

31 (d) The consulting physician's diagnosis and prognosis, and
32 verification that the qualified individual has the capacity to make
33 medical decisions, is acting voluntarily, and has made an informed
34 decision, or that the consulting physician has determined that the
35 individual is not a qualified individual.

36 (e) A report of the outcome and determinations made during a
37 mental health specialist's assessment, if performed.

38 (f) The attending physician's offer to the qualified individual
39 to withdraw or rescind his or her request at the time of the
40 individual's second oral request.

(g) A note by the attending physician indicating that all requirements under Sections 443.5 and 443.6 have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying drug prescribed.

~~443.8.~~

443.9. A qualified individual may not receive a prescription for an aid-in-dying drug pursuant to this part unless he or she has made an informed decision. Immediately before writing a prescription for an aid-in-dying drug under this part, the attending physician shall verify that the individual is making an informed decision.

~~443.9.~~

443.10. (a) A request for an aid-in-dying drug as authorized by this part shall be in substantially the following form:

REQUEST FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER I,,

am an adult of sound mind and a resident of the State of California.

I am suffering from, which my attending physician has determined is in its terminal phase and which has been medically confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying drug to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control.

I request that my attending physician prescribe an aid-in-dying drug that will end my life in a humane and dignified manner if I choose to take it, and I authorize my attending physician to contact any pharmacist about my request.

INITIAL ONE:

..... I have informed one or more members of my family of my decision and taken their opinions into consideration.

..... I have decided not to inform my family of my decision.

..... I have no family to inform of my decision.

I understand that I have the right to withdraw or rescind this request at any time.

I understand the full import of this request and I expect to die if I take the aid-in-dying drug to be prescribed. My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.

I make this request voluntarily, without reservation, and without being coerced.

1 Signed:.....

2 Dated:.....

3

4

5 DECLARATION OF WITNESSES

6 We declare that the person signing this request:

7 (a) is personally known to us or has provided proof of identity;

8 (b) signed this request in our presence;

9 (c) is an individual whom we believe to be of sound mind and not under duress,
10 fraud, or undue influence; and

11 (d) is not an individual for whom either of us is the attending physician,
12 consulting physician, or mental health specialist.

13Witness 1/Date

14Witness 2/Date

15 NOTE: Only one of the two witnesses may be a relative (by blood, marriage,
16 registered domestic partnership, or adoption) of the person signing this request
17 or be entitled to a portion of the person's estate upon death. Only one of the
18 two witnesses may own, operate, or be employed at a health care facility where
19 the person is a patient or resident.

20

21 (b) (1) The written language of the request shall be written in
22 the same translated language as any conversations, consultations,
23 or interpreted conversations or consultations between a patient and
24 his or her attending or consulting physicians.

25 (2) Notwithstanding paragraph (1), the written request may be
26 prepared in English even when the conversations or consultations
27 or interpreted conversations or consultations were conducted in a
28 language other than English if the English language form includes
29 an attached interpreter's declaration that is signed under penalty
30 of perjury. The interpreter's declaration shall state words to the
31 effect that:

32

33 I (INSERT NAME OF INTERPRETER), am fluent in English and (INSERT
34 TARGET LANGUAGE).

35 On (insert date) at approximately (insert time), I read the "Request for an
36 Aid-In-Dying Drug to End My Life" to (insert name of individual/patient) in
37 (insert target language).

38 Mr./Ms. (insert name of patient/qualified individual) affirmed to me that he/she
39 understood the content of this form and affirmed his/her desire to sign this

1 form under his/her own power and volition and that the request to sign the
2 form followed consultations with an attending and consulting physician.
3 I declare that I am fluent in English and (insert target language) and further
4 declare under penalty of perjury that the foregoing is true and correct.
5 Executed at (insert city, county, and state) on this (insert day of month) of
6 (insert month), (insert year).
7 X_____Interpreter signature
8 X_____Interpreter printed name
9 X_____Interpreter address

10
11 (3) An interpreter whose services are provided pursuant to
12 paragraph (2) shall not be related to the qualified individual by
13 blood, marriage, registered domestic partnership, or adoption or
14 be entitled to a portion of the person's estate upon death. An
15 interpreter whose services are provided pursuant to paragraph (2)
16 shall meet the standards promulgated by the California Healthcare
17 Interpreting Association or the National Council on Interpreting
18 in Health Care or other standards deemed acceptable by the
19 department for health care providers in California.

20 ~~443.10.~~

21 443.11. (a) A provision in a contract, will, or other agreement
22 executed on or after January 1, 2016, whether written or oral, to
23 the extent the provision would affect whether a person may make,
24 withdraw, or rescind a request for an aid-in-dying drug is not valid.

25 (b) An obligation owing under any contract executed on or after
26 January 1, 2016, may not be conditioned or affected by a qualified
27 individual making, withdrawing, or rescinding a request for an
28 aid-in-dying drug.

29 ~~443.11.~~

30 443.12. (a) The sale, procurement, or issuance of a life, health,
31 or accident insurance or annuity policy, health care service plan
32 contract, or health benefit plan, or the rate charged for a policy or
33 plan contract may not be conditioned upon or affected by a person
34 making or rescinding a request for an aid-in-dying drug.

35 (b) Notwithstanding any other law, a qualified individual's act
36 of self-administering an aid-in-dying drug may not have an effect
37 upon a life, health, or accident insurance or annuity policy other
38 than that of a natural death from the underlying disease.

39 (c) An insurance carrier shall not provide any information in
40 communications made to an individual about the availability of

1 an aid-in-dying drug absent a request by the individual, his or her
2 attending physician at the behest of the individual, or the
3 individual's designee. *individual or his or her attending physician*
4 *at the behest of the individual.* Any communication shall not
5 include both the denial of treatment and information as to the
6 availability of aid-in-dying drug coverage. For the purposes of this
7 subdivision, "insurance carrier" means a health care service plan
8 as defined in Section 1345 of this code or a carrier of health
9 insurance as defined in Section 106 of the Insurance Code.

10 ~~443.12.~~

11 ~~443.13.~~ (a) Notwithstanding any other law, a person shall not
12 be subject to civil, criminal, administrative, employment, or
13 contractual liability or professional disciplinary action for
14 participating in good faith compliance with this part, including an
15 individual who is present when a qualified individual
16 self-administers the prescribed aid-in-dying drug.

17 (b) A health care provider or professional organization or
18 association shall not subject an individual to censure, discipline,
19 suspension, loss of license, loss of privileges, loss of membership,
20 or other penalty for participating in good faith compliance with
21 this part or for refusing to participate in accordance with
22 subdivision (e).

23 (c) Notwithstanding any other law, a health care provider shall
24 not be subject to civil, criminal, administrative, disciplinary,
25 employment, credentialing, professional discipline, contractual
26 liability, or medical staff action, sanction, or penalty or other
27 liability for participating in this part, including, but not limited to,
28 determining the diagnosis or prognosis of an individual,
29 determining the capacity of an individual for purposes of qualifying
30 for the act, providing information to an individual regarding this
31 part, and providing a referral to a physician who participates in
32 this part.

33 (d) (1) A request by a qualified individual to an attending
34 physician to provide an aid-in-dying drug in good faith compliance
35 with the provisions of this part shall not provide the sole basis for
36 the appointment of a guardian or conservator.

37 (2) No actions taken in compliance with the provisions of this
38 part shall constitute or provide the basis for any claim of neglect
39 or elder abuse for any purpose of law.

(e) (1) Participation in activities authorized pursuant to this part shall be voluntary. ~~A person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of a patient's decision under this part, except as required by Sections 442 to 442.7, inclusive. Notwithstanding Sections 442 to 442.7, inclusive, a person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of an individual's decision under this part.~~

(2) *Notwithstanding any other law, a health care provider is not subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for refusing to participate in activities authorized under the End of Life Option Act, including, but not limited to, refusing to inform a patient regarding his or her rights under the End of Life Option Act and not referring an individual to a physician who participates in activities authorized under the End of Life Option Act.*

~~(2)~~

(3) If a health care provider is unable or unwilling to carry out a qualified individual's request under this part and the qualified individual transfers care to a new health care provider, the individual may request a copy of his or her medical records pursuant to law.

~~443.13.~~

443.14. (a) Subject to subdivision (b), notwithstanding any other law, a health care provider may prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this part while on premises owned or under the management or direct control of that prohibiting health care provider or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

(b) A health care provider that elects to prohibit its employees, independent contractors, or other persons or entities, including health care providers, from participating in activities under this part, as described in subdivision (a), shall first give notice of the policy prohibiting participation under this part to the individual or

1 entity. A health care provider that fails to provide notice to an
2 individual or entity in compliance with this subdivision shall not
3 be entitled to enforce such a policy against that individual or entity.

4 (c) Subject to compliance with subdivision (b), the prohibiting
5 health care provider may take action, including, but not limited
6 to, the following, as applicable, against any individual or entity
7 that violates this policy:

8 (1) Loss of privileges, loss of membership, or other action
9 authorized by the bylaws or rules and regulations of the medical
10 staff.

11 (2) Suspension, loss of employment, or other action authorized
12 by the policies and practices of the prohibiting health care provider.

13 (3) Termination of any lease or other contract between the
14 prohibiting health care provider and the individual or entity that
15 violates the policy.

16 (4) Imposition of any other nonmonetary remedy provided for
17 in any lease or contract between the prohibiting health care provider
18 and the individual or entity in violation of the policy.

19 (d) Nothing in this section shall be construed to prevent, or to
20 allow a prohibiting health care provider to prohibit any other health
21 care provider, employee, independent contractor, or other person
22 or entity from any of the following:

23 (1) Participating, or entering into an agreement to participate,
24 in activities under this part, while on premises that are not owned
25 or under the management or direct control of the prohibiting
26 provider or while acting outside the course and scope of the
27 participant's duties as an employee of, or an independent contractor
28 for, the prohibiting health care provider.

29 (2) Participating, or entering into an agreement to participate,
30 in activities under this part as an attending physician or consulting
31 physician while on premises that are not owned or under the
32 management or direct control of the prohibiting provider.

33 (e) In taking actions pursuant to subdivision (c), a health care
34 provider shall comply with all procedures required by law, its own
35 policies or procedures, and any contract with the individual or
36 entity in violation of the policy, as applicable.

37 (f) For purposes of this section:

38 (1) "Notice" means a separate statement in writing advising of
39 the prohibiting health care provider policy with respect to
40 participating in activities under this part.

(2) “Participating, or entering into an agreement to participate, in activities under this part” means doing or entering into an agreement to do any one or more of the following:

(A) Performing the duties of an attending physician as specified in Section 443.5.

(B) Performing the duties of a consulting physician as specified in Section 443.6.

(C) Performing the duties of a mental health specialist, in the circumstance that a referral to one is made.

(D) Delivering the prescription for, dispensing, or delivering the dispensed aid-in-dying drug pursuant to paragraph (2) of subdivision (b) of, and subdivision (c) of, Section 443.5.

(E) Being present when the qualified individual takes the aid-in-dying drug prescribed pursuant to this part.

(3) “Participating, or entering into an agreement to participate, in activities under this part” does not include doing, or entering into an agreement to do, any of the following:

(A) Diagnosing whether a patient has a terminal disease, informing the patient of the medical prognosis, or determining whether a patient has the capacity to make decisions.

(B) Providing information to a patient about this part.

(C) Providing a patient, upon the patient’s request, with a referral to another health care provider for the purposes of participating in the activities authorized by this part.

(g) Any action taken by a prohibiting provider pursuant to this section shall not be reportable under Sections 800 to 809.9, inclusive, of the Business and Professions Code. The fact that a health care provider participates in activities under this part shall not be the sole basis for a complaint or report by another health care provider of unprofessional or dishonorable conduct under Sections 800 to 809.9, inclusive, of the Business and Professions Code.

(h) Nothing in this part shall prevent a health care provider from providing an individual with health care services that do not constitute participation in this part.

~~443.14.~~

~~443.15.~~ (a) A health care provider may not be sanctioned for any of the following:

1 (1) Making an initial determination pursuant to the standard of
2 care that an individual has a terminal disease and informing him
3 or her of the medical prognosis.

4 (2) Providing information about the End of Life Option Act to
5 a patient upon the request of the individual.

6 (3) Providing an individual, upon request, with a referral to
7 another physician.

8 (b) A health care provider that prohibits activities under this
9 part in accordance with Section ~~443.13~~ 443.14 shall not sanction
10 an individual health care provider for contracting with a qualified
11 individual to engage in activities authorized by this part if the
12 individual health care provider is acting outside of the course and
13 scope of his or her capacity as an employee or independent
14 contractor of the prohibiting health care provider.

15 (c) Notwithstanding any contrary provision in this section, the
16 immunities and prohibitions on sanctions of a health care provider
17 are solely reserved for actions taken pursuant to this part, and those
18 health care providers may be sanctioned for conduct and actions
19 not included and provided for in this part if the conduct and actions
20 do not comply with the standards and practices set forth by the
21 Medical Board of California.

22 ~~443.15.~~

23 443.16. (a) Knowingly altering or forging a request for an
24 aid-in-dying drug to end an individual's life without his or her
25 authorization or concealing or destroying a withdrawal or rescission
26 of a request for an aid-in-dying drug is punishable as a felony if
27 the act is done with the intent or effect of causing the individual's
28 death.

29 (b) Knowingly coercing or exerting undue influence on an
30 individual to request an aid-in-dying drug for the purpose of ending
31 his or her life or to destroy a withdrawal or rescission of a request
32 is punishable as a felony.

33 (c) For purposes of this section, "knowingly" has the meaning
34 provided in Section 7 of the Penal Code.

35 (d) Nothing in this section shall be construed to limit civil
36 liability.

37 (e) The penalties in this section do not preclude criminal
38 penalties applicable under any law for conduct inconsistent with
39 the provisions of this section.

1 ~~443.16.~~

2 443.17. Nothing in this part may be construed to authorize a
3 physician or any other person to end an individual's life by lethal
4 injection, mercy killing, or active euthanasia. Actions taken in
5 accordance with this part shall not, for any purposes, constitute
6 suicide, assisted suicide, homicide, or elder abuse under the law.

7 ~~443.17.~~

8 443.18. (a) The State Public Health Officer shall annually
9 review a sample of records maintained pursuant to Section ~~443.7~~
10 443.8 and shall adopt regulations establishing additional reporting
11 requirements for physicians and pharmacists pursuant to this part.

12 (b) The reporting requirements shall be designed to collect
13 information to determine utilization and compliance with this part.
14 The information collected shall be confidential and shall be
15 collected in a manner that protects the privacy of the patient, the
16 patient's family, and any medical provider or pharmacist involved
17 with the patient under the provisions of this part.

18 (c) Based on the information collected, the department shall
19 provide an annual compliance and utilization statistical report
20 aggregated by age, gender, race, ethnicity, and primary language
21 spoken at home and other data the department may determine
22 relevant. The department shall make the report public within 30
23 days of completion of each annual report.

24 (d) The State Public Health Officer shall make available to
25 health care providers the End of Life Option Act Checklist by
26 posting it on its Internet Web site.

27 ~~443.18.~~

28 443.19. A person who has custody or control of any unused
29 aid-in-dying drugs prescribed pursuant to this part after the death
30 of the patient shall personally deliver the unused aid-in-dying drugs
31 for disposal by delivering it to the nearest qualified facility that
32 properly disposes of controlled substances, or if none is available,
33 shall dispose of it by lawful means in accordance with guidelines
34 promulgated by the California State Board of Pharmacy or a federal
35 Drug Enforcement Administration approved take back program.

36 ~~443.19.~~

37 443.20. Any governmental entity that incurs costs resulting
38 from a qualified individual terminating his or her life pursuant to
39 the provisions of this part in a public place shall have a claim

1 against the estate of the qualified individual to recover those costs
2 and reasonable attorney fees related to enforcing the claim.

3 SEC. 2. The Legislature finds and declares that Section 1 of
4 this act, which adds Section ~~443.17~~ 443.18 to the Health and Safety
5 Code, imposes a limitation on the public's right of access to the
6 meetings of public bodies or the writings of public officials and
7 agencies within the meaning of Section 3 of Article I of the
8 California Constitution. Pursuant to that constitutional provision,
9 the Legislature makes the following findings to demonstrate the
10 interest protected by this limitation and the need for protecting
11 that interest:

12 (a) Any limitation to public access to personally identifiable
13 patient data collected pursuant to Section ~~443.17~~ 443.18 of the
14 Health and Safety Code as proposed to be added by this act is
15 necessary to protect the privacy rights of the patient and his or her
16 family.

17 (b) The interests in protecting the privacy rights of the patient
18 and his or her family in this situation strongly outweigh the public
19 interest in having access to personally identifiable data relating to
20 services.

21 (c) The statistical report to be made available to the public
22 pursuant to subdivision (c) of Section ~~443.17~~ 443.18 of the Health
23 and Safety Code is sufficient to satisfy the public's right to access.

24 SEC. 3. The provisions of this part are severable. If any
25 provision of this part or its application is held invalid, that
26 invalidity shall not affect other provisions or applications that can
27 be given effect without the invalid provision or application.

28 SEC. 4. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.