The Elizabeth Whitefield End-of-Life Options Act (Patient's Request for Medical Aid in Dying)

LOGO

ADOPTION DATE:

APPROVED BY:
LAST DATE REVISED:
LAST DATE REVIEWED:

Office of Origin: _____

I. PURPOSE

A. The Elizabeth Whitefield End-of-Life Options Act authorizes medical aid in dying and allows an adult New Mexico resident with capacity, who has been diagnosed with a terminal illness with a life expectancy of six months or less, and who meets other requirements, to request a prescription for medical-aid-in-dying medications for the purpose of shortening a prolonged dying process through self-administration of the aid-in-dying medications.

B. The purpose of this policy is to describe the requirements and procedures for compliance with the Elizabeth Whitefield End-of-Life Options Act and to provide guidelines for responding to patient requests for information about aid-in-dying medications in accordance with federal and state laws and regulations and The Joint Commission accreditation standards.

C. The requirements outlined in this policy do not preclude or replace other existing policies, including but not limited to Withdrawing or Foregoing Life Sustaining Treatment, Pain Management, Advance Directives/NM MOST, Resuscitation Status (DNR) or End-of-Life Care, referenced herein.

II. REFERENCES

A. The Elizabeth Whitefield End-of-Life Options Act

B. HOSPITAL Administrative Policies:

1. Advance Health Care Directives/NM MOST
2. Patient Rights and Responsibilities
3. Ethics Consultation
4. Withdrawing or Foregoing of Life Sustaining Treatment
5. End-of-Life Care
6. Resuscitation Status (DNR)
7. Pain Management
8. Interpreting and Translation Services
9. Employee Requests to be Excluded from Patient Care

III. DEFINITIONS (for purposes of this policy)

A. **Surrogate:** A surrogate decision maker can be an agent appointed in an advance health care directive or a durable power of attorney for health care, or a court appointed conservator of the person. When patients without such an agent or conservator lose capacity to make health care decisions, a family member, domestic partner or persons with whom the patient is closely associated may be considered to act as surrogates for health care decisions, in conformance with the NM Uniform Health Care Decisions Act.

B. **Capacity to Make Health Care Decisions:** A patient who, in the opinion of the patient's health care provider, has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives and the ability to make and communicate an "informed decision" (defined herein) to health care providers.

C. **Aid-in-dying Medications:** medications determined and prescribed by a healthcare provider for a qualified patient, which the qualified patient may choose to self-administer to bring about his or her death due to a terminal disease.

D. **Terminal Disease:** an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

E. **Healthcare Provider:** any of the following individuals authorized pursuant to the New Mexico Drug, Device and Cosmetic Act to prescribe a medication to be used in medical aid in dying: (1) a physician licensed pursuant to the Medical Practice Act; (2) an osteopathic physician licensed pursuant to the Osteopathic Medicine Act; (3) a nurse licensed in advanced practice pursuant to the Nursing Practice Act; or (4) a physician assistant licensed pursuant to the Physician Assistant Act or the Osteopathic Medicine Act.

F. **Prescribing Provider:** the health care provider who prescribes medical aid in dying medication

G. Consulting Provider: the health care provider who confirms eligibility of a patient by: (1) examining the individual; (2) reviewing the individual's relevant medical records; and (3) confirming, in writing, the prescribing health care provider's prognosis that the individual is suffering from a terminal illness.

H. **Mental Health Professional:** a state-licensed psychiatrist, psychologist, master social worker, psychiatric nurse practitioner or professional clinical mental health counselor

I. **Informed decision:** A decision by a patient with a terminal disease to request and obtain a prescription for medications that the patient may self-administer to shorten a prolonged

dying process, that is based on an understanding and acknowledgement of the relevant facts, and that is made after being fully informed by the prescribing provider of all of the following:

1. The patient's medical diagnosis and prognosis;
2. The potential risks associated with self-administering the medications to be prescribed;
3. The probably result of taking the medications to be prescribed;
4. The possibility that the individual may choose not to obtain the medications or may obtain the medications but may decide not to ingest it; and
5. The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

J. **Self-Administer:** a qualified patient's affirmative, conscious, and physical act of administering and ingesting the aid-in-dying medications to shorten a prolonged dying.

IV. POLICY

A. Elizabeth Whitefield End-of-Life Options Act (herein after the "Act") allows adult (18 years or older) terminally ill patients, with capacity to make health care decisions, seeking to mitigate suffering and shorten a prolonged dying process, to request aid-in-dying medications from a prescribing provider. These terminally ill patients must be New Mexico residents who will, within reasonable medical judgment, die within 6 months. Patients requesting an aid-in-dying medications must satisfy all requirements of the Act in order to obtain the prescription for those medications. Such a request must be initiated by the patient and cannot be made through utilization of an Advance Health Care Directive, NM MOST or other document. It cannot be requested by the patient's surrogate.

B. [ ] Hospital ("HOSPITAL") allows its health care providers who are permitted under the Act to participate in activities authorized by Elizabeth Whitefield End-of-Life Options Act if they so choose. HOSPITAL health care providers may, as applicable and as defined in the Act and herein:

1. Perform the duties of a prescribing provider.
2. Perform the duties of a consulting provider.
3. Perform the duties of a mental health professional.
4. Prescribe medications under this Act.
5. Fill a prescription under this Act.

6. Be present when the qualified patient self-administers the aid-in-dying medications provided that the provider does not participate or assist the patient in self-administering the life-ending medications.
7. Participate in patient or provider support related to the Act.

C. When a patient makes an inquiry about or requests access to activities under the Act, the patient will initially be referred to HOSPITAL [Social Services Department or Patient Navigator Program]. [Social workers] who are well versed in the requirements of the Act will assist patient understanding of the Act, inform them about the process and provide educational material related to the patient's end-of-life options. This activity will augment, but not substitute for, the obligations of the attending and consulting providers' roles described herein. If the patient's HOSPITAL provider chooses not to participate in the Act, which is his or her right under the law, a social worker will assist in the identification of a HOSPITAL provider who does participate.

D. HOSPITAL neither encourages nor discourages participation in the Act; participation is entirely voluntary. Only those providers who are willing and desire to participate should do so. Those persons who do choose to participate are reminded that the overall goal is to support the patient's end-of-life wishes, and that participation may not necessarily result in aid-in-dying medications being prescribed if the patient's needs can be met in other ways (e.g. pain management, hospice or palliative care).

E. Participation in activities authorized under the Act is completely voluntary. A HOSPITAL provider, staff or employee that elects not to engage in activities authorized by the Act is not required to take any action in support of a patient's request for a prescription for an aid-in-dying medications, but must provide referral to another provider who participates in such activities.

F. A mental health assessment is required by law only if the prescribing or consulting provider determines that the patient has indications of a mental disorder that impairs judgment.

G. HOSPITAL may provide oversight and may review records to the extent necessary to ensure all requirements of the law have been followed and the correct documentation completed and submitted.

V. PROCEDURES

A. Requirements of the Elizabeth Whitefield End-of-Life Options Act

1. Patients eligible to request aid-in-dying medications from their healthcare provider: HOSPITAL adult patients who have capacity to make health care decisions and who have a terminal disease with a prognosis of six months or less.

2. Patients are qualified to receive a prescription for an aid-in-dying medications if all of the following conditions are met:
    a. The patient meets the eligibility requirements.
    b. The patient has voluntarily requested, in writing, aid-in-dying medications;
    c. The prescribing provider determines that the patient is making an informed decision and has fully informed the patient of all their available end-of-life options, including palliative care and hospice;
    d. The prescribing provider has affirmed that the individual is: (1) enrolled in a medicare-certified hospice program; or (2) eligible to receive medical aid in dying after the prescribing health care provider has referred the individual to a consulting health care provider, who has experience with the underlying condition rendering the qualified individual terminally ill, and the consulting health care provider has: (a) examined the individual; (b) reviewed the individual's relevant medical records; and (c) confirmed, in writing, the prescribing health care provider's prognosis that the individual is suffering from a terminal illness
        i. If the prescribing provider for an individual enrolled in hospice is an Advance Practice Nurse or a Physician assistant, they must obtain written confirmation from the hospice physician or another consulting physician of 1) the patient's mental capability to make end-of-life care decisions and 2) their ability to self-administer medical aid-in-dying medication before a prescription can be written.
        ii. If the prescribing provider for an individual not enrolled in hospice is an Advance Practice Nurse or Physician Assistant, they must obtain written confirmation from a consulting physician of 1) the patient's terminal prognosis, 2) their mental capability to make end-of-life care decisions and 3) their ability to self-administer medical aid-in-dying medication before a prescription can be written.
    e. The patient has the physical and mental capacity to self-administer the aid-in-dying medications;
    f. The patient is a New Mexico resident

g. The prescribing provider has fulfilled all the requirements of the law as set forth in state regulations

3. Method of request for aid-in-dying medications and documentation requirements: Requests for aid-in-dying medications must come directly and solely from the patient who will self-administer the medications. Such requests cannot not be made by a patient's surrogate or by the patient's health care provider.

   To make a request for a prescription for aid-in-dying medications, the patient must directly submit to his or her prescribing provider:

   a. A written request using the form required by the State of New Mexico "Request for Medication to End My Life in a Peaceful Manner" (HOSPITAL Form X. This form must be placed in the patient's medical record. Form X sets forth the following conditions:

      i. The written request form (Form X) must be signed and dated, in the presence of two witnesses, by the patient seeking the aid-in-dying medications.

      ii. The witnesses must also sign the form and by so doing attest that to the best of their knowledge and belief the patient is all of the following:

         (a) An individual who is personally known to them or has provided proof of identity.

         (b) An individual who voluntarily signed the request in their presence.

         (c) An individual whom they believe to be of sound mind and not under duress, fraud or undue influence.

   b. The patient's prescribing provider, consulting provider and mental health professional cannot serve as witnesses. Additionally, only one witness may be related to the requesting patient by blood, marriage, registered domestic partnership or adoption or be entitled to a portion of the requesting patient's estate upon death. Only one witness may or own, operate or be employed by a health care facility where the patient is receiving medical care or resides.

4. Responsibility of the prescribing provider: The responsibilities of a prescribing provider are non-delegable. Before prescribing the aid-in-dying medications, the prescribing provider must do all of the following:
    a. Make the initial determination about whether the patient is eligible under the Act as described in section A 1 above, including determination that:
        i. The adult patient has capacity to make health care decisions
        ii. The patient has a terminal disease with a prognosis of six months or less, medically confirmed by hospice enrollment or a consulting provider
    b. Make additional determinations that:
        i. The patient has made a voluntary request for an aid-in-dying medication, including completion of witness attestations that the patient is of sound mind and not under fraud, duress or undue influence
        ii. The patient's request does not arise from coercion or undue influence.
        iii. The patient is a resident of New Mexico
        iv. The patient is making an informed decision as defined herein.
    c. If the prescribing provider determines that the patient has indications of a mental disorder that impairs judgment, the patient must be referred for a mental health assessment. This assessment must be documented in the patient's medical record. Patients with a diagnosed mental health disorder, such as, depression are not automatically excluded from participating in medical-aid-in-dying, for such exclusion to occur it must be determined that a mental health disorder is interfering with the patient's decision making capacity.
    d. Counsel the patient about the importance of:
        i. Participating in a hospice program.
        ii. Maintaining the aid-in-dying medications in a safe and secure location until the patient takes it.
    e. Inform the patient that he or she may withdraw or rescind the request for aid-in-dying medications at any time and in any manner.

f. Offer the patient an opportunity to withdraw or rescind the request for an aid-in-dying medications before prescribing the medications.

g. Confirm that all requirements are met and all appropriate steps are carried out in accordance with the law (as outlined in this policy) before writing a prescription for an aid-in-dying medications.

h. Fulfill all the documentation requirements

5. Responsibility of mental health specialist: Protecting mentally ill patients, or patients lacking capacity, from receiving prescriptions for aid-in-dying medications and to ensure a vigilant and systematic examination for physical or mental health conditions that could be interfering with informed decision making.

   A mental health professional who chooses to act as a mental health specialist must conduct one or more consultations with the patient and do all of the following:

   a. Examine the qualified patient and his or her relevant medical records.

   b. Determine that the patient has the mental capacity to make medical decisions, act voluntarily, and make an informed decision.

   c. Determine that the patient is not suffering from impaired judgment due to a mental disorder. Patients with depression are not automatically excluded and it must be determined that a mental illness is interfering with decision making capacity.

   d. Document in the patient's medical record a report of the outcome and determinations made during the mental health specialist's assessment.

   e. Fulfill the documentation requirements

6. Documentation requirements: All of the following must be documented in the patient's medical record:

   a. The written request for aid-in-dying medication on the "Request for Medication to End my Life in a Peaceful Manner" form.

   b. The prescribing providers's diagnosis and prognosis, and the determination that the qualified patient has the capacity to make healthcare decisions, is acting voluntarily, and has made an informed decision, or that the attending provider has determined that the individual is not a qualified patient.

c. Documentation of a patient's enrollment in a medicare-certified hospice program or the consulting provider's verification of the patient's terminal diagnosis and prognosis.

d. A report of the outcome and determination made during a mental health specialist's assessment, if requested.

e. A note by the prescribing provider indicating that all requirements of the Act have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying medications prescribed.

f. Death Certificate: The Act provides that actions taken under the Act shall not, for any purpose, constitute suicide, assisted suicide, homicide or elder abuse. It is HOSPITAL policy that the physician reference the patient's underlying medical condition that qualified the patient for aid in dying should be reported as the underlying cause of death.

g. Complete and submit documentation required by the New Mexico Department of Health.