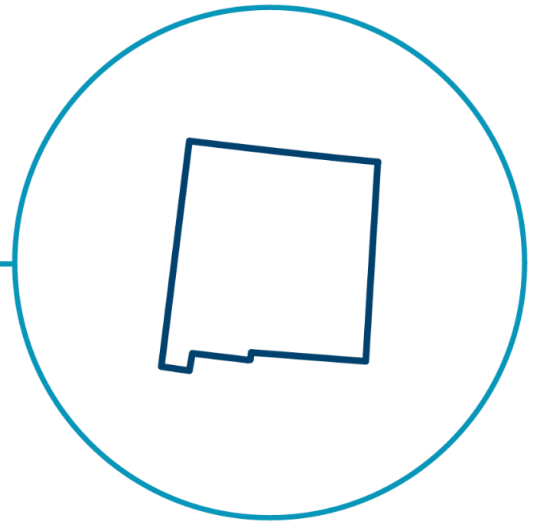


An Introduction to Medical Aid in Dying

NEW MEXICO



CompassionAndChoices.org
info@compassionandchoices.org
800.247.7421

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New Mexico Elizabeth Whitefield End-of-Life Options Act

Medical aid in dying is the practice in which a terminally ill, mentally capable adult patient voluntarily requests and receives a prescription medication from a physician that they can self-administer to die peacefully. This allows patients to end their lives on their own terms. Medical aid in dying is authorized in 12 jurisdictions with regulations varying by jurisdiction to ensure that the process is carried out ethically and safely.

The Elizabeth Whitefield End-of-Life Options Act authorizes the practice of medical aid in dying, allowing a terminally ill, mentally capable adult with six months or less to live to request from their healthcare provider a prescription for medication that the patient can decide to self-ingest to die peacefully.

The Elizabeth Whitefield End-of-Life Options Act was signed into law in 2021.

Eligibility

To be eligible to use the law, the individual must:

- > Be 18 years or older
- > Have been diagnosed with a terminal illness
- > Have a prognosis of six months or less to live
- > Be mentally capable of making their own healthcare decisions

The patient must also be:

- > A resident of New Mexico
- > Acting voluntarily and making an informed decision
- > Capable of self-administering the medical aid-in-dying medication

A qualified clinician is defined as:

- > A physician licensed pursuant to the NM Medical Practice Act;
- > An osteopathic physician licensed pursuant to the NM Osteopathic Medicine Act;

- > A nurse licensed in advanced practice pursuant to the NM Nursing Practice Act; or
- > A physician assistant licensed pursuant to the NM Physician Assistant Act or the NM Osteopathic Medicine Act.

Individuals are not eligible for medical aid in dying because of age or disability.

Summary of Process to Obtain Medical Aid in Dying

In most cases, two New Mexico qualified clinicians must confirm eligibility to use the Elizabeth Whitefield End-of-Life Options Act. At least one of the qualified clinicians confirming eligibility must be either a physician (MD) or osteopathic physician (DO).

In all cases, if either provider has concerns about the individual's mental capacity or ability to make an informed decision, that provider must refer the individual to a mental health professional, defined as a state-licensed psychiatrist, psychologist, master social worker, psychiatric nurse practitioner or professional clinical mental health counselor for a determination of capacity. In that case, a prescription cannot be written for aid-in-dying medication unless and until an individual making the request is capable of making their own medical decisions.

The patient may change their mind at any time and withdraw their request, or choose not to take the medication.

Making A Request

Two people must witness the completion of the required written request form contained in the bill. Only one witness can be a relative. The written request is made by filling out the Request for Medication to End My Life in a Peaceful Manner form included in the Act and this packet. Only the terminally ill individual can make the request. The request cannot be made through an advance directive or by a family member, friend or healthcare proxy. The request must be made to a qualified clinician, not office staff. Please see the "Steps" section of this document for details.

Medication

The type and dosage of aid-in-dying medication prescribed, including medications to prevent nausea and vomiting, vary with each individual. The medication is not administered via injection. The terminally ill individual must be able to ingest the medication themselves, which usually requires swallowing or by using a feeding tube or rectal catheter. No one can administer the medication to the terminally ill individual. **The prescribing clinician will send the prescription directly to the pharmacy. The pharmacy will NOT accept a prescription directly from an individual.** A designated family member or friend may pick up the medication or it can be shipped overnight by mail.

If the attending or consulting healthcare provider has any questions about medications or participating pharmacies, the healthcare provider can call Compassion & Choices' free and confidential Doc2Doc consultation line at 800.247.7421.

Terminally ill individuals should contact their insurance carrier about what their policy covers and be sure to ask their qualified clinician or pharmacy about the cost of the medication. Some insurance policies, including New Mexico Medicaid, cover the cost of the medication and/or the healthcare provider visits while others such as Medicare, do not.

Unused Medication

There is no time limit for an individual to take the medication. Once the prescription is filled an individual can keep the medication until their death, even if they decide to not use it. There is no obligation to take the medication. If the person who was prescribed the medication does not take or use all of it, the medication should be disposed of safely and properly in accordance with state and federal law. Please note, it is illegal to use another person's medication. If the terminally ill individual decides to pick up the medication, he or she must designate a person who will be responsible for the lawful disposal of any unused aid-in-dying medication after their death. **Please note it is illegal to use another person's medication.**

To safely discard unused medication:

- > Do NOT flush down the toilet, sink or other drain
- > Remove all personal information on bottle labels and medicine packaging
- > Use the following website to search for other authorized drug collection/disposal locations near you:

<https://www.fda.gov/drugs/disposal-unused-medicines-what-you-should-know/drug-disposal-drug-take-back-locations>

- > Contact the pharmacist who filled the prescription for more assistance.

Death Certificates

Death certificates for medical aid in dying comply with guidelines provided by the Centers for Disease Control and Prevention (CDC). When a terminally ill person dies using medical aid in dying, the underlying terminal disease is listed as the cause of death on the death certificate, (for example, cancer, ALS). In addition, the law states life insurance policies and other post-death benefits are not affected by utilizing the Elizabeth Whitefield End-of-Life Options Act. The sale, procurement, or issuance of a life, health, or accident insurance or annuity policy, or the rate charged for such a policy, may not be conditioned upon or affected by an individual's act of making or rescinding a request for medical aid in dying.

Steps for Accessing Medical Aid in Dying in New Mexico

The first step is to speak with your doctor to discuss your interest in medical aid in dying. Be sure to be explicit in your discussion, and ask if they will support this option by writing a prescription. Review the “Talking With Your Physician” section of this packet (see p. 7) for prompts you can use to begin your discussion.

If you are considering medical aid in dying, it is also a good time to think about any additional planning that you may need to begin, including consideration of hospice enrollment.

Note: Hospice is a specialized service (covered by insurance and Medicare), providing wonderful individualized support to people at the end of their lives. Those eligible for medical aid in dying are also eligible to receive hospice services. **Many hospice organizations have a policy regarding medical aid in dying, so it is important to review and discuss that policy if enrolled in hospice and pursuing this option.**

If your Healthcare Provider says no:

Ask them to refer you to a healthcare provider who will support you. You can also find a new healthcare provider, on your own, to treat you, who you can ask for aid in dying medication from as long as they are qualified to give you a terminal diagnosis and 6 month or less prognosis. You always have the right to seek care from another provider if yours will not support your end-of-life care preferences. Don't be afraid to advocate for the end-of-life experience you want. Your healthcare provider can refer you to another provider in the event that they personally disagree with or are prohibited from participating in your end-of-life care. If your healthcare system has policies in place that do not allow your healthcare provider to participate, they may refer you to another provider outside of their system, or you will have to seek one on your own. To learn more, visit candc.link/personal-advocacy

If your Healthcare Provider says yes:

1. **Individuals enrolled in hospice in New Mexico are considered terminal based on the standard of care and do not require a second confirmation if the prescribing provider is a MD/DO.** If the prescribing provider for an individual enrolled in hospice is an advanced practice nurse or a physician assistant, they must obtain written confirmation from the hospice MD/DO or another consulting MD/DO of 1) the patient's mental capability to make end-of-life care decisions and 2) their ability to self-administer aid-in-dying medication before a prescription can be written.
2. **If the prescribing provider for an individual not enrolled in hospice is an advanced registered nurse practitioner or physician assistant,** they must obtain written confirmation from a consulting MD/DO 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 aid-in-dying medication before a prescription can be written.
3. **If the prescribing provider for an individual not enrolled in hospice is a MD/DO,** they must obtain written confirmation from a consulting qualified clinician 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 aid-in-dying medication before a prescription can be written.
4. **If deemed necessary,** a patient's capacity to make their own healthcare decisions will also be confirmed by a psychiatrist, psychologist or master social worker, psychiatric nurse practitioner, or professional clinical mental health counselor
5. **The Request for Medication to End My Life in a Peaceful Manner form** must be completed and given directly to the prescribing qualified clinician. **This form must be witnessed by two people.** Please read the form carefully to determine who may or may not be a witness.* (see p. # 20 for copy of written request)
 - a. *At least two people must witness the written request. Neither witness can be a health care provider to the individual. No more than one witness shall be a relative by blood, marriage or adoption of the person signing this request. No more than one witness shall own, operate or be employed at a health care facility where the person signing that request is a patient or resident."

6. **A prescription for aid-in-dying medication may be filled at least 48 hours after a prescribing clinician writes the prescription. The prescribing clinician may waive this waiting period if they confirm that the requesting individual may die within the waiting period.** The prescription must be sent directly to the pharmacy by the qualified clinician, not by you, a family member or friend. The pharmacy may need time to order the medication. Some pharmacies will prepare the medication before it is picked up if the qualified clinician adds this instruction to the prescription.
7. **The waiting period in New Mexico between requesting medication and filling the prescription is 48 hours, but the process may take longer.** We encourage people who are interested in medical aid in dying to start talking to their healthcare providers well in advance. Once the prescription is written, you may choose to keep it on file at the pharmacy if and until you choose to take the medication. You need not pay for the medication until the prescription is filled.
8. **Planning for the day of ingestion is also important to do during this time, and allows your healthcare team and loved ones to support you as you wish.** This could include discussing who you want to present, what kind of sounds or smells you would like to experience, managing symptoms prior to ingestion, and what you would like the day to feel like. This is also a good time to review or discuss final arrangements.
9. **A request may be withdrawn at any time.** There is no obligation to take the aid-in-dying medication simply because you have it in your possession. Many people find comfort in simply knowing the medication is available. If the terminally ill person does pick up the medication, they must designate the person who will be responsible for its safe disposal, if they ultimately do not take it.

Talking With Your Healthcare Provider

The process to access medical aid in dying can take weeks and sometimes months. We encourage people to start the process early. You don't have to wait until you're sick to ask your healthcare provider if they would support you in accessing medical aid in dying if you should become eligible for it.

Some people feel anxious about discussing end-of-life issues with their healthcare providers, but doing so will enable you to have an end-of-life care experience consistent with your values. If you are uncomfortable with talking to your healthcare provider about this, you can bring a friend to help you or start the conversation in writing. It is important to make sure you are able to access the end of life option you want.

Both healthcare providers and health systems are allowed to opt out of providing medical aid in dying, so it's important to make sure that you are able to access it.

No one but you can make this request. It is important to speak directly with the clinician; do not ask the office staff or leave a request on voicemail. Below are some examples of ways to ask your clinician about their ability to support you in a way that aligns with your values.

Discussing Aid in Dying with Your Healthcare Providers

Language for someone who DOES NOT have a terminal illness:

- > *Though I am not currently facing a terminal illness, access to the option of medical aid in dying, if I were to qualify, is important to me. I would like to know if you/this hospital system would support that decision to access the Elizabeth Whitefield End-of-Life Options Act.*
- > *I want to live with as much quality as possible for as long as I can, and I've thought long and hard about what I want my end-of-life experience to look like. If I ever meet the legal requirements, I would like to have the option of using the Elizabeth Whitefield End-of-Life Options Act. Is that something you would be able to support me in seeking?*
- > *I hope you will honor my decisions and respect my values, as I respect yours. Will you write a prescription for aid-in-dying medication in accordance with the Elizabeth Whitefield End-of-Life Options Act when I am eligible? If you are not able to honor that request, I would like to find out now.*

Language for someone who DOES have a terminal illness:

- > *I have thought about this for quite some time, and am interested in accessing the Elizabeth Whitefield End-of-Life Options Act. Is this a decision that you would support me in?*
- > *I want to die the way I've lived: on my own terms. That's why I'm interested in the Elizabeth Whitefield End-of-Life Options Act. It's my understanding that in order to initiate the process, I need to first make a verbal request. Could you please document my verbal request today and place a referral to hospice?*

Regardless of your healthcare provider's response, it is important to ask that your request be recorded in your medical record.

If your healthcare provider says no, you can ask for a referral to another healthcare provider who has chosen to participate. In some health systems supportive of medical aid in dying, there are established internal referral systems within the network. That means that if your healthcare provider won't do it, they should be able to refer you to another healthcare provider in your health system who will support you. If your healthcare provider won't refer you, or your health system does not allow medical aid in dying, then you can try to re-establish care with a system or facility that will support you in medical aid in dying.

Compassion & Choices End-of-Life Consultation Service provides free and confidential consultation to providers who have questions about end-of-life care options, including medical aid in dying. If your clinician is willing to participate but needs support, please refer them to the End-of-Life Consultation Service phone line at 800.247.7421. Tell them that a trained professional will return their call.

End-of-Life Care Planning Checklist

Please visit the Compassion & Choices website for more resources at CompassionAndChoices.org/plan.

Many people postpone making arrangements for healthcare at the end of life. Planning ahead allows individuals to spend their final days with friends and family while focusing on the present. Informing loved ones of wishes ahead of time relieves them of the possible burden of making decisions about your final arrangements.

Please consider whether any of the following are appropriate for your situation:

- ☐ Discuss your wishes with family and loved ones
- ☐ Discuss your wishes with your provider(s) and healthcare team
- ☐ Provide a copy of your current Advance Directive to
 - ☐ Healthcare Provider(s)
 - ☐ Healthcare entity (such as your local hospital system)
 - ☐ Agent named as surrogate decision maker
 - ☐ Hospice team (if applicable)
- ☐ Create and/or locate important documents
 - ☐ Advance Directive or Living Will
 - ☐ Durable Power of Attorney for Healthcare
 - ☐ Durable Power of Attorney for Finances
 - ☐ Last Will and Testament
 - Compassion & Choices has partnered with Free Will to offer this documentation at no cost, available at CompassionAndChoices.org/ways-to-give/free-will
 - ☐ Living Trust
 - ☐ Life Insurance policies (with beneficiary information)
 - ☐ Information for financial accounts, assets property
 - ☐ Information for final arrangements, funeral plans, prepaid services
- ☐ Ensure important documents are up to date and reflect your current wishes
- ☐ Name a guardian for children, pets

Glossary

advance care planning

Includes a person's living will, medical durable power of attorney (or health care proxy – see below), do not resuscitate, and portable medical orders. Called "advance" because it is ideally prepared prior to a health crisis in which it would guide medical care. Advance care planning documents vary by state and can include other documents, such as a dementia provision. See also "living will" below. Find state specific advance directives on Compassion & Choices' website at: CompassionAndChoices.org/our-issues/advance-care-planning

advance directive

A general term for any document that contains instructions pertaining to a person's wishes related to medical treatment if they can not make care decisions on their own. More information can be found here:

CompassionAndChoices.org/resource/putting-priorities-paper-advance-directive

attending physician

An attending physician is defined as a physician who has primary responsibility for care of the individual and the treatment of their disease. In the medical aid in dying process, the attending physician is the doctor who writes the prescription for aid-in-dying medication.

medical aid in dying

A safe, time tested, and trusted medical practice in which a terminally ill, mentally capable adult with a prognosis of six months or less to live may request from their doctor a prescription for medication that they can choose to self-ingest to bring about a peaceful death. Where medical aid in dying is currently authorized, providers are required to confirm that a patient is fully informed and provide the patient with information about additional end-of-life options, including comfort care, hospice and pain control, before providing a prescription.

DNR

Stands for “do not resuscitate,” a medical order making clear an individual’s request that no measures be taken to resuscitate them if their heart or breathing stops. The order is made while the individual is mentally capable and conscious, or by that individual’s health care proxy (see below) if they are not.

health care proxy

A health care proxy — also known as a representative, surrogate, agent or durable power of attorney for health care — is a person authorized to make health care decisions if someone is unable to make their own. They work closely with your health care team to ensure your care and treatment preferences are followed. Selecting a health care proxy is an important part of advance care planning (see “advance care planning ” above).

hospice

A program in which an interdisciplinary team of caregivers provides comfort and support to terminally ill people when medical treatment is no longer desired, expected to cure or prolong life. Hospice is provided wherever the person resides, most often at home. It is voluntary and also involves and supports the individual’s family and/or loved ones. According to state reports, the majority of people who access medical aid in dying are also enrolled in hospice.

living will

A document that expresses a person’s end-of-life preferences if they become unable to speak for themselves. A living will is just one component of advance care planning (see “advance care planning ” above).

NMMOST

Stands for New Mexico Medical Orders for Scope of Treatment. An important form to provide detailed guidance about an individual’s wishes for end-of-life medical care. The order is part of advance care planning and is prepared by a medical professional. It is often printed on

brightly colored green paper and placed on a refrigerator so it can easily be found during an emergency.

palliative sedation

Palliative sedation — also referred to as terminal sedation — is the continuous administration of intravenous or subcutaneous medication to relieve severe, intractable symptoms that cannot be otherwise controlled with less invasive interventions. Must be managed carefully by a medical team.

prognosis

Prognosis refers to the likely outcome of a disease and may include an estimated time an individual has left to live. Medical aid-in-dying laws and hospice eligibility require a prognosis of six months or less.

refusing medical treatment

The legal right to decline medical treatment even if that treatment is necessary to sustain life. These interventions can include dialysis, medications, ventilators, feeding tubes, and pacemakers.

terminally ill

When a disease or illness cannot be cured and is likely to lead to death, it is considered a terminal illness.

VSED

Stands for “voluntarily stopping eating and drinking,” a legal option for any seriously ill individual with decision-making capacity, who wishes to shorten their dying process, by foods and fluids of any kind, including artificial nutrition and/or hydration.

Tracking of End-of-Life Plans & Documents

Individual Name: _____ Individual Birthdate: _____

Choosing medical aid in dying is a process that requires conversation, planning and coordination. This document is designed to help organize essential information related to the process and share with others if you choose to do so.

Advance Directive:

- > Location of advance directive documents _____
- > Durable power of attorney for health care (name/relationship/phone):

Hospice (if enrolled):

- > Name of organization: _____
- > Contact Person: _____
- > Contact Email or Phone: _____
- > Is Hospice aware of and able to support end of life plans? Yes _____ No _____
- > If no, what is the plan for making sure end of life plans are honored?

- > Any special arrangements need to be made with Hospice to make sure end of life plans are supported? Yes _____ No _____

- If so, what are they and who is in charge of getting those in place?

> Will you be requesting someone from the Hospice present? Yes _____ No _____

- If so, who?: _____

Final Arrangements:

> Have these arrangements been made? Yes _____ No _____

- If yes, name of Mortuary/Funeral Home: _____

- If yes, what information/details should be shared: _____

Medical Aid in Dying:

> Attending provider: _____ Phone: _____

> Consulting provider: _____ Phone: _____

> Mental capacity evaluation (*only if requested by healthcare provider*):

Yes _____ No _____

> Date of 1st verbal request: _____

Healthcare Provider Name: _____

- > Date of 2nd verbal request: _____
Healthcare Provider Name: _____
- > Date of mental capacity evaluation: _____
Evaluator's Name: _____
- > Date written request submitted: _____
- > Date aid-in-dying medications prescribed: _____
- > Date aid-in-dying medications picked up/received: _____
 - Medications: _____
- > Name of pharmacy: _____
- > Location or contact person for instructions on disposing of unused medication: _____

Plans for Ingestion:

- > Date of planned ingestion: _____
- > Who knows about your plan: _____
- > Who will be present during ingestion: _____
- > Describe how you you want the day to go (environment, smells, sounds, activities):

- Plan for unexpected event (such as prolonged dying process, vomiting, waking up, etc)

- Date(s) discussed: _____

- Plan details: _____

Date Final Attestation form completed: _____

Person delivering form to prescribing physician: _____

Additional Notes:

[illegible]

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Request for Medication Form

From the New Mexico Department of Health

REQUEST FOR MEDICATION TO END MY LIFE IN A PEACEFUL MANNER

I, _____, am an adult of sound mind.

I am suffering from a terminal illness, which is a disease or condition that is incurable and irreversible and that, according to reasonable medical judgment, will result in death within six months. My health care provider has determined that the illness is in its terminal phase. _____ (Patient Initials)

I have been fully informed of my diagnosis and prognosis, the nature of the medical aid in dying medication to be prescribed and the potential associated risks, the expected result and the feasible alternative, concurrent or additional treatment opportunities, including hospice care and palliative care focused on relieving symptoms and reducing suffering. _____ (Patient Initials)

I request that my health care provider prescribe medication that will end my life in a peaceful manner if I choose to self-administer the medication, and I authorize my health care provider to contact a willing pharmacist about to fulfill this request. _____ (Patient Initials)

I understand that I have the right to rescind this request at any time. _____ (Patient Initials)

I understand the full import of this request, and I expect to die if I self-administer the medical aid in dying medication prescribed. I further understand that although most deaths occur within three hours, my death may take longer. My health care provider has counseled me about this possibility. _____ (Patient Initials)

I make this request voluntarily and without reservation.

Signed: _____

Date: _____ Time: _____

DECLARATION OF WITNESSES:

We declare that the person signing this request:

1. is personally known to us or has provided proof of identity;
2. signed this request in our presence;
3. appears to be of sound mind and not under duress, fraud or undue influence; and
4. is not a patient for whom either of us is a health care provider.

	Witness 1:	Witness 2:
Signature:	_____	_____
Printed Name:	_____	_____
Relationship to Patient:	_____	_____
Date:	_____	_____

NOTE: No more than one witness shall be a relative by blood, marriage or adoption of the person signing this request. No more than one witness shall own, operate or be employed at a health care facility where the person signing that request is a patient or resident."

Provider Attestation (optional):

Signature of the Prescribing Provider

Date Prescription Written

NOTE: The Provider Attestation is not mandatory nor necessary to be included on this Request form. However, the Office of Medical Investigator may require proof that the individual is a Medical Aid-in-Dying patient. Having a copy of both the Request form and such Attestation of Prescription readily available in the medical record and on hand with the individual is strongly advised.