

California

California's [End of Life Option Act](#), which legalised assisted suicide, came into effect on 9 June 2016.¹

The Act requires an annual report with very minimal data. The [2016](#)², [2017](#)³, [2018](#)⁴ and [2019](#)⁵ annual reports have been published.

Number of deaths

In the first seven months of its operation (9 June 2016-31 December 2016) 111 people died from ingesting lethal substances prescribed under the Act. This accounted for 0.06% of all deaths in California in this period.

In the next 12 months (Jan-Dec 2017) 374 people died from ingesting lethal substances prescribed under the Act. This accounted for 0.14% of all deaths in California in 2017. By comparison it took five years of legalised assisted suicide in Oregon before the death rate from assisted suicide reached 0.14% of all deaths.

In 2019 there were 405 people reported as dying after ingesting lethal substances prescribed under the Act. Reported deaths by assisted suicide accounted for 0.15% of all deaths in California in 2019 but for 0.22% of deaths of non-Hispanic white Californians – three times the rate for Hispanics (0.07%) and Asians (0.08%) and 11 times the rate for non-Hispanic blacks (0.02%).⁶

Mental health

Although there is a requirement in the [Act](#) that “If there are indications of a mental disorder, the physician shall refer the individual for a mental health specialist assessment” and, if such a referral is made for the physician to report this to the California Department of Public Health, the annual reports do not contain any information about whether any such referrals occurred.

Complications

There is a [follow up form](#) which must be completed and returned to the California Department of Public Health by the “attending physician”, that is the physician who writes the prescription for the

¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520162AB15

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<https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/CDPH%20End%20of%20Life%20Option%20Act%20Report%20-ADA.pdf>

³ <https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/2017EOLADataReport.pdf>

⁴

<https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/CDPH%20End%20of%20Life%20Option%20Act%20Report%202018-FINAL.pdf>

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https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/CDPHEndofLifeOptionActReport2019%20_Final%20ADA.pdf

⁶ Deaths by ethnicity from:

https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/Pending%20Birth%20and%20Death%20Tables/CA_deaths_by_race_by_month.pdf

lethal substance, within 30 days of the death of the person whether from ingesting the lethal substance, from the underlying illness or other causes.⁷

In the case of those people who die from ingesting the lethal substance and for whom a licensed health care provider was present at the time of death this form also seeks information on the length of time between ingestion and unconsciousness and between ingestion and death, as well as any complications that occurred.

Reasons for request

In all cases the form also seeks information on the concerns that may have contributed to the patient's decision to request a prescription for a lethal substance including a concern about: His or her terminal condition representing a steady loss of autonomy; The decreasing ability to participate in activities that made life enjoyable; The loss of control of bodily functions; Persistent and uncontrollable pain and suffering; A loss of Dignity.

None of the information outlined in the above two paragraphs has been reported in the published annual reports although the Act does not preclude the publication of this data.

Final attestation

The Act does provide that “Within 48 hours prior to the individual self-administering the aid-in-dying drug, the individual shall complete the final attestation form. If aid-in-dying medication is not returned or relinquished upon the patient’s death as required in Section 443.20, the completed form shall be delivered by the individual’s health care provider, family member, or other representative to the attending physician to be included in the patient’s medical record.”

There do not appear to be any penalties for failure to comply with this provision. And of course there could be no penalty on the person who dies from ingesting the lethal substance without filling out the form. This provision looks very much like an attempt at a “safeguard” which is in reality entirely illusory.

The annual reports do not give any information as to whether final attestation forms were received for all 1283 people who died from lethal substances prescribed under the Act.

Automatic repeal

One good feature of the Act is that it “shall remain in effect only until January 1, 2026, and as of that date is repealed” – unless of course a subsequent Act extends its operation.

Aiding, advising or encouraging suicide now lawful

California used to have an absolute prohibition against aiding, advising or encouraging suicide.

Until 5 September 2018 section 401 of its Penal Code provided that:

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[https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/EOL%20Attending%20Physician%20follow-up%20form%20\(fillable\).pdf](https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/EOL%20Attending%20Physician%20follow-up%20form%20(fillable).pdf)

Every person who deliberately aids, or advises, or encourages another to commit suicide is guilty of a felony.

Since 5 September 2018 **this absolute prohibition has been eroded by an exception.**

Section 401 now reads:

(a) Any person who deliberately aids, advises, or encourages another to commit suicide is guilty of a felony.

*(b) A person whose **actions are compliant with the provisions of the End of Life Option Act (Part 1.85 (commencing with Section 443) of Division 1 of the Health and Safety Code) shall not be prosecuted under this section.***

California's *End of Life Option Act* facilitates the request and ingestion of lethal substances in order to commit suicide. It is available for anyone who is said to have "*an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months*".

Section 443.17 of the *End of Life Option Act* does provides that:

Knowingly coercing or exerting undue influence on an individual to request or ingest an aid-in-dying drug for the purpose of ending his or her life or to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without his or her knowledge or consent, is punishable as a felony.

There is a **significant gap** between "*knowingly coercing or exerting undue influence*" and *deliberately advising, or encouraging* a person to commit suicide.

This change to California's Penal Code makes it lawful for a person to deliberately advise and encourage a person to request and/or subsequently to ingest a lethal substance in order to kill herself, provided only that the intensity or manner of the advising and encouragement falls just short of "*knowingly coercing or exerting undue influence*".

An impatient heir – or anyone else who wanted a person dead - could almost certainly get away with repeatedly and persuasively suggesting that the person make a request for a lethal substance or later, having been supplied with the lethal substance, to take it.

Financial issues

[Stephanie Packer](#), a wife and mother of four who was diagnosed with a terminal form of scleroderma, said her insurance company initially indicated it would pay for her to switch to a different chemotherapy drug at the recommendation of her doctors.

But shortly after California's *End of Life Option Act* went into effect, Ms. Packer's insurance company had a change of heart.

"And when the law was passed, it was a week later I received a letter in the mail saying they were going to deny coverage for the chemotherapy that we were asking for," Ms. Packer said.

She said she called her insurance company to find out why her coverage had been denied. On the call, she also asked whether suicide pills were covered under her plan.

“And she says, ‘Yes, we do provide that to our patients, and you would only have to pay \$1.20 for the medication,’” Ms. Packer said.

Ms. Packer said her doctors have appealed the insurance company’s decision twice, to no avail. She said **the assisted-suicide law creates an incentive for insurance companies to deny terminally ill patients coverage.**⁸

[Dr Brian Callister](#), associate professor of internal medicine at the University of Nevada, said he tried to transfer two patients to California and Oregon for procedures not performed at his hospital. Representatives from two different insurance companies denied those transfer requests by phone, he said.

The patients were not terminal, but “would have become terminal without the procedures.”

And in both cases, the insurance medical director said to me, "Brian, we're not going to cover that procedure or the transfer, but would you consider assisted suicide?" ”

The phone calls took place last year within the span of a month, Dr. Callister said. He said he did nothing to prompt the suggestion in either case.⁹

Conclusion

California's experiment with assisted suicide includes allowing others (including impatient heirs) to deliberately advise and encourage a person to request and/or subsequently to ingest a lethal substance in order to kill herself.

Not even all of the minimal data required to be reported by physicians is being made public.

Californians are being denied health insurance coverage for treatment but being offered payment for assisted suicide instead.

⁸ <https://www.washingtontimes.com/news/2016/oct/20/assisted-suicide-law-prompts-insurance-company-den/>

⁹ <https://m.washingtontimes.com/news/2017/may/31/insurance-companies-denied-treatment-to-patients-o/>