

DEATH WITH DIGNITY

May an adult person who has a terminal disease and less than six months to live request medication to self-administer to end his or her life?

Yes. The Washington Death with Dignity Act,¹ Initiative Measure no. 1000, was approved by voters in November, 2008. The Act became effective on March 4, 2009 after the Department of Health finalized administrative rules implementing the Act.

What are the requirements for the patient?

The patient must:

- Be an adult (over 18 years of age);²
- Be a resident of Washington State;³
- Be suffering from a terminal disease;⁴
- Be mentally competent;⁵
- Make a written request for medication that the patient may self-administer to end his or her life;⁶
- Make an oral request to the attending physician for medication that the patient may self-administer to end his or her life;⁷ and
- Make a second oral request to the attending physician for medication that the patient may self-administer to end his or her life 15 days or more after the first oral request.⁸

Is there a standard form for the patient to make a written request for medication to self-administer to end his or her life?

Yes. The Department of Health Form DOH 422-063, “Request for Medication to End My Life in a Humane and Dignified Manner” is the form a patient must use under the Death with Dignity Act. The form is available at: <http://www.doh.wa.gov/dwda/forms/WrittenRequest.pdf>. The form must be signed by the patient and the patient must acknowledge the following:⁹

- The patient is of sound mind
- The patient is suffering from a known diagnosis which the patient’s attending physician has determined is an “incurable, irreversible terminal disease that will result in death

¹ Chapter 70.245 RCW.

² RCW 70.245.020.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ RCW 70.245.090

⁸ *Id.*

⁹ RCW 70.245.220.

within six months” and that the diagnosis and prognosis have been confirmed by a consulting physician;

- The patient has been fully informed of the diagnosis, prognosis, medications to be prescribed, associated risks, likely outcome, and feasible alternatives;¹⁰
- The patient requests the attending physician to prescribe, and a pharmacist to dispense, medication the patient may self-administer to end his or her life;
- Whether or not the patient has informed his or her family of the decision, or has no family to inform;
- The patient has the right to rescind the request at any time
- The patient understands that death will occur, that death usually occurs within three hours, but may take longer;
- That the requests is made voluntarily, and without reservation; and
- That he or she accepts full moral responsibility for his or her actions;

The form must be witnessed by two persons, one of which shall not be a relative by blood, marriage, or adoption, shall not be entitled to any portion of the patient’s estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or a resident.¹¹ The witnesses must acknowledge that the person requesting the medications under the Act:¹²

- Is personally known to the witness or has provided proof of identity;
- Has signed the request in the witness’ presence
- Appeared to be of sound mind, and not under duress, fraud, or undue influence; and
- Is not a patient for whom either of the witnesses is the attending physician

Is the patient who requested medication to end his or her life under the Death with Dignity Act the only person who may administer the prescribed medication?

Yes. Once all of the requirements of the Death with Dignity Act have been met, only the patient may self-administer the medication(s) to end his or her life.¹³ The Death with Dignity Act does not authorize or permit a physician or any other person to end a patient’s life.¹⁴ The Act prohibits active euthanasia, lethal injection, or mercy killing.¹⁵

Who may prescribe the medication(s) to end a person’s life under the Death with Dignity Act?

¹⁰ RCW 70.245.010.

¹¹ RCW 70.245.220.

¹² *Id.*

¹³ See RCW 70.245.010(12); RCW 70.245.090; RCW 70.245.220.

¹⁴ RCW 70.245.180.

¹⁵ *Id.*

Only the requesting patient's attending physician may prescribe under the Act.¹⁶ When a patient has more than one physician, the physician who acts as the attending physician must be clearly documented.

What are the responsibilities of the attending physician?

The attending physician must complete the "Attending Physician's Compliance Form," DOH 422-064.¹⁷ The form is available at:

[http://www.doh.wa.gov/portals/1/Documents/Pubs/422-064-](http://www.doh.wa.gov/portals/1/Documents/Pubs/422-064-AttendingPhysicianComplianceForm.pdf)

[AttendingPhysicianComplianceForm.pdf](http://www.doh.wa.gov/portals/1/Documents/Pubs/422-064-AttendingPhysicianComplianceForm.pdf). This form requires that the attending physician must document the patient's first oral request for medication(s) to end life and determine that the patient:¹⁸

- Has a terminal disease;
- Has six months or less to live;
- Is competent;
- Is a Washington resident – which may be proven by the patient:
 - Possessing a Washington state driver's license;
 - Being registered to vote in Washington; or
 - Produce evidence that the person owns or leases property in Washington;
- Is acting voluntarily;
- Has made his or her decision after being fully informed of:
 - His or her medical diagnosis;
 - His or her prognosis;
 - The potential risks associated with taking the medications prescribed;
 - The potential result of taking the medications prescribed; and
 - The feasible alternatives, including (but not limited to) comfort care, hospice, and pain control.

In addition, the attending physician must indicate that the patient:¹⁹

- Was informed of his or her right to rescind the request at any time (permitted at any time, but is required at the time of the patient's second oral request);²⁰
- Was recommended to inform the next of kin;
- Was counseled about the importance of having another person present when the patient takes the medication(s); and
- Was counseled about the importance of not taking the medication(s) in a public place.

¹⁶ RCW 70.245.040(1)(l).

¹⁷ WAC 246-978-020.

¹⁸ See also: RCW 70.245.040(1).

¹⁹ See also: RCW 70.245.040(1).

²⁰ RCW 70.245.090; RCW 70.245.120(6).

The attending physician must also:

- Refer the patient to a consulting physician for medical confirmation of the diagnosis and for a determination that the patient is competent and acting voluntarily;²¹
- Refer the patient for counseling if the attending physician or the consulting physician believes the patient may be suffering from a psychiatric disorder or depression causing impairment;²²
- Document the patient's written and oral requests for medication to end his or her life, the attending physician's diagnosis and prognosis and that of the consulting physician;²³
- Document the outcomes and determinations from counseling, if performed;²⁴ and
- Document that all requirements under the DWDA have been met, and indicate the steps taken to carry out the patient's request, including a notation of the medication prescribed.²⁵

Only after all the required steps have been taken may the attending physician write a prescription for medication which would enable the qualified person to self-administer in order to end his or her life.

What are the requirements for the attending physician regarding the mental status of the patient?

If the attending physician is comfortable making the determination that the patient is not suffering from a psychiatric or psychological disorder, or depression that would cause impaired judgment, the attending can so attest on the "Attending Physician's Compliance Form." However, if the attending physician is not able to comfortably and confidently make that determination, then the attending physician must refer the patient for evaluation and counseling for a possible psychiatric or psychological disorder, or depression.²⁶ The attending physician must attach the completed "Psychiatric/Psychological Consultant's Compliance Form" to the "Attending Physician's Compliance Form."²⁷

What are the attending physician's responsibilities regarding the death certificate?

The attending physician may sign the death certificate. The death certificate must list the underlying terminal disease as the cause of death. Death resulting from participation in the Act is not suicide.

What are the reporting requirements for the attending physician?

²¹ RCW 70.245.040(1)(d).

²² RCW 70.245.040(1)(e); RCW 70.245.060.

²³ RCW 70.245.120(1)-(4).

²⁴ RCW 70.245.120(5)

²⁵ RCW 70.245.120(7).

²⁶ RCW 70.45.060.

²⁷ See RCW 70.245.150(1)(b).

Within 30 calendar days of writing a prescription for medication to end the life of a qualified patient, the attending physician must send the following documentation, completed, signed, and dated to the **State Registrar, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504**.²⁸

- The patient's completed written request for medication to end life, either on the "Request for Medication to End My Life in a Humane and Dignified Manner" form, DOH 422-063, or in a substantially same form;
- The "Attending Physician's Compliance Form," DOH 422-064;
- The "Consulting Physician's Compliance Form," DOH 422-065; and
- The "Psychiatric/Psychological Consultant's Compliance Form," DOH 422-066, if such an evaluation was performed.

Within 30 calendar days of a qualified patient's ingestion of a lethal dose of medication prescribed under the Act, or death from any cause, whichever comes first, the attending physician must complete the "Attending Physician's After Death Reporting Form," DOH 422-068.²⁹ The form is available at: <http://www.doh.wa.gov/portals/1/Documents/Pubs/422-068-AttendingPhysicianAfterDeathReportingForm.pdf>. This form requires that the attending physician answer questions regarding the patient and the attending physician's care of the patient. In addition, the attending physician must provide information regarding the circumstances of the patient's death, if known, including whether there were any complications from ingestion of the medication(s).

In addition, within 30 calendar days of a qualified patient's ingestion of a lethal dose of medication prescribed under the Act, or death from any cause, whichever comes first, the dispensing health care provider must complete the "Pharmacy Dispensing Record Form," DOH 422-067.³⁰ This form is available at: <http://www.doh.wa.gov/portals/1/Documents/Pubs/422-067-PharmacyDispensingRecord.pdf>. Information reported to the Department of Health must include:

- Patient's name and date of birth;
- Patient's address;
- Prescribing physician's name and phone number;
- Dispensing health care provider's name, address and phone number;
- Medication dispensed and quantity;
- Date the prescription was written; and
- Date the medication was dispensed.

What happens to the information gathered by the Department of Health?

²⁸WAC 246-978-020(1); See also RCW 70.245.150.

²⁹WAC 246-978-020(2).

³⁰WAC 246-978-020(3).

The Department of Health must generate and make available to the public an annual statistical report of information collected under the Act.³¹ All information collection by the Department of Health under the Act shall not be a public record and may not be available for inspection by the public under the Washington Public Records Act.³² The protected information includes, but is not limited to, the identity of patients, health care providers, and health care facilities.³³

What are the responsibilities of the consulting physician?

The consulting physician must examine the patient and his or her relevant medical records.³⁴ The consulting physician must complete the “Consulting Physician’s Compliance Form,” DOH 422-065. The form is available at <http://www.doh.wa.gov/portals/1/Documents/Pubs/422-065-ConsultingPhysicianComplianceForm.pdf>. This form requires the consulting physician to confirm the determinations:

- That the patient has a terminal disease;
- That the patient has six months or less to live;
- That the patient is competent;
- That the patient is acting voluntarily;
- That the patient has made his or her decision after being fully informed of:
 - His or her medical diagnosis;
 - His or her prognosis;
 - The potential risks associated with taking the medication(s) to be prescribed; and
 - The feasible alternatives, including (but not limited to) comfort care, hospice care, and pain control.

The consulting physician must make a determination concerning the patient’s mental state. The consulting physician either determines that the patient is not suffering from a psychiatric or psychological disorder, or depression causing impaired judgment, or refers the patient for evaluation and counseling for a possible psychiatric or psychological disorder, or depression causing impaired judgment.³⁵

What are the responsibilities of the psychiatric/psychological consultant?

The psychiatric/psychological consultant must examine the patient in order to determine if the patient suffers from a psychiatric or psychological disorder, or depression causing impaired

³¹ RCW 70.245.150(3).

³² RCW 70.245.150(2).

³³ WAC 246-978-030.

³⁴ RCW 70.245.050.

³⁵ See RCW 70.245.060.

judgment.³⁶ The consultant must document the results of the examination on the “Psychiatric/Psychological Consultant’s Compliance Form,” DOH 422-066. This form is available at: <http://www.doh.wa.gov/portals/1/Documents/Pubs/422-066-PsychiatricPsychologicalConsultantComplianceForm.pdf>. The completed form must include:

- The patient’s medical diagnosis;
- The psychiatric/psychological evaluation; and
- The consultant’s signature attesting that the patient is not suffering from a psychiatric or psychological disorder, or depression causing impaired judgment.

The form does not provide a clear mechanism to indicate that the patient does indeed have a condition that may cause impaired judgment. If the consultant makes such a determination, the consultant may consider writing the conclusion prominently, and signing the document outside of the section which indicates the patient does not have impaired judgment.

Are physicians who comply with a patient’s request under the Death with Dignity Act protected from criminal and civil liability or other forms of retribution?

Yes.³⁷ A person participating in good faith under the Act is not subject to civil or criminal liability or professional disciplinary action. In addition, any professional organization or association, or a health care provider, may not subject a physician who participates in good faith under the Act to censure, discipline, suspension, loss of license, loss of privileges, or other penalty.³⁸

May a physician or a health care facility refuse to participate in a patient’s request for medication(s) to end his or her life under the Death with Dignity Act?

Yes. Only willing health care providers shall participate in the provision of medication(s) to end the life of a qualified patient under the Act.³⁹

If a physician does not want to participate, does the act require a referral to a physician who will?

No.⁴⁰ But if the patient transfers his or her care to another attending physician, then the non-participating physician must transfer, upon request, a copy of the patient’s relevant medical records to the new health care provider.⁴¹

³⁶ *Id.*

³⁷ RCW 70.245.190(1)(a).

³⁸ RCW 70.245.190(1)(b).

³⁹ RCW 70.245.190(1)(d).

⁴⁰ RCW 70.245.190(2)(d)(ii)(C).

⁴¹ RCW 70.02.030(1).

May a health care facility prohibit a physician from participating under the Death with Dignity Act?

Yes. A health care facility may prohibit a physician from participating under the Act on the premises of the facility if the facility has given notice to all physicians and health care providers with privileges to practice on the premises of the facility and to the general public of the facility's policy regarding participation under the Act.⁴²

May a health care facility, or another health care provider, which prohibits participation under the Death with Dignity Act impose sanctions on physicians who violate the policy of the health care facility?

Yes. A health care facility or other health care provider may subject a physician to certain sanctions if the facility or health care provider notified the sanctioned physician before participation under the Act that it prohibits participation under the Act.⁴³ A health care facility or other health care provider that imposes sanctions for participation under the Act must follow all due process and other procedures in the sanction process. If a physician participates under the Act on the premises of a health care facility which has given notice that it prohibits such participation, sanctions may include:⁴⁴

- Loss of privileges, loss of medical staff membership, or other sanctions provided under the applicable medical staff bylaws, policies, and procedures of the health care facility;
- Termination of a lease or other property contract; or
- Termination of a contract under which the sanctioned physician is an employee or independent contractor.
 - But a participating physician is protected from sanctions if the physician participates under the Act outside the scope of the physician's capacity as an employee or independent contractor.

Are the attending and consulting physicians eligible for reimbursement for services provided under the Death with Dignity Act?

The Death with Dignity Act does not address payment for physicians' services or the medications prescribed.

As the Act states that the "terminal disease" shall be listed as the cause of death rather than "suicide" on the death certificate, insurance benefits may be available under that definition.⁴⁵ However, while reimbursement is possible, a health insurer may invoke a "not medically necessary" exclusion, denying payment for these services. Physicians are encouraged

⁴² RCW 70.245.190 (2)(a)

⁴³ RCW 70.245.190(2)(b)(i)-(iii).

⁴⁴ *Id.*

⁴⁵ RCW 70.245.040(2).

to contact the relevant health insurer for the patient in question to ascertain the specific policy regarding reimbursement for services rendered under this Act.

Federal funds may not be used to reimburse for services or items rendered under this Act, which likely will affect Medicaid, TRICARE, and other federal programs.⁴⁶ For Medicare, the *Medicare Benefit Policy Manual* specifically states “[a] health care item or service for the purpose of causing, or assisting to cause, the death of any individual (assisted suicide) is not covered.”⁴⁷

For non-governmental programs, a health insurer would make the determination whether the service is covered under its policies.

Does the State of Washington provide information regarding the Death with Dignity Act which is available to the public?

Yes. The Department of Health has a detailed website devoted to the Death with Dignity Act. The website contains information regarding the Act, a link to all required forms, and the yearly reports of data gathered by the department. The website is located at:

<http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/DeathwithDignityAct.aspx>.

⁴⁶ The Act does not specify who must pay for the services.

⁴⁷ Medicare Benefit Policy Manual: <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c15.pdf> (Updated June, 2012).