

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 coauthor: ~~Assembly Member Eggman~~ coauthors: *Assembly Members Alejo and Eggman*)

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

(Coauthors: Assembly Members Chu, Cooper, Frazier, Cristina Garcia, 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 ~~illness;~~ *disease*, as defined, to make a request for medication 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 aid-in-dying medication ~~and~~ *and*, under specified ~~circumstances~~ *circumstances*, an interpreter declaration

to be signed subject to penalty of perjury, thereby imposing a crime and state-mandated local program.

This bill would prohibit a provision in a contract, will, or other agreement, ~~or in a health care service plan contract, or health benefit plan contract,~~ *agreement* from being conditioned upon or affected by a person making or rescinding a request for the above-described medication. 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, 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 aid-in-dying medication 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 medication coverage.*

This bill would provide immunity from civil or criminal 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 participation in activities authorized pursuant to this bill shall be voluntary. *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 medication to end an individual's life without his or her authorization or to conceal or destroy a rescission of a request for medication, 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 medication for the purpose of ending his or her life or to destroy a 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 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 others, suicide or homicide.

This bill would require the State ~~Department of Public Health~~ *Officer* to adopt regulations ~~regarding the collection of information~~ *establishing additional reporting requirements for physicians and pharmacists to determine the use of of, and compliance with with, the act, and would require the department 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.*

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 aid-in-dying medication.

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.

10 (b) “Aid-in-dying medication” means medication determined
11 and prescribed by a physician for a qualified individual, which the

1 qualified individual may choose to self-administer to bring about
2 his or her death due to a terminal ~~illness~~: *disease*.

3 (c) “Attending physician” means the physician who has primary
4 responsibility for the health care of an individual and treatment of
5 the individual’s terminal ~~illness~~: *disease*.

6 (d) “Competent” means that, in the opinion of a court or in the
7 opinion of an individual’s attending physician, consulting
8 physician, psychiatrist, or psychologist, the individual has the
9 ability to make and communicate an informed decision to health
10 care providers, including communication through a person familiar
11 with the individual’s manner of communicating, if that person is
12 available.

13 (e) “Consulting physician” means a physician who is qualified
14 by specialty or experience to make a professional diagnosis and
15 prognosis regarding an individual’s ~~illness~~: *terminal disease*.

16 (f) “Counseling” means one or more consultations, as necessary,
17 between an individual and a psychiatrist or psychologist licensed
18 in this state for the purpose of determining that the individual is
19 competent and is not suffering from a psychiatric or psychological
20 disorder or depression causing impaired judgment.

21 (g) “Department” means the State Department of Public Health.

22 (h) “Health care provider” or “provider” means a person
23 licensed, certified, or otherwise authorized or permitted by law to
24 administer health care or dispense medication in the ordinary
25 course of business or practice of a profession, including, but not
26 limited to, physicians, doctors of osteopathy, and pharmacists.
27 “Health care provider” or “provider” includes a health care facility
28 as identified in Section 1250.

29 (i) “Informed decision” means a decision by ~~a terminally ill~~
30 ~~individual~~ *an individual with a terminal disease* to request and
31 obtain a prescription for medication that the individual may
32 self-administer to end the individual’s life, that is based on an
33 understanding and acknowledgment of the relevant facts, and that
34 is made after being fully informed by the attending physician of
35 all of the following:

- 36 (1) The individual’s medical diagnosis and prognosis.
- 37 (2) The potential risks associated with taking the medication to
38 be prescribed.
- 39 (3) The probable result of taking the medication to be prescribed.

1 (4) The possibility that the individual may choose not to obtain
2 the medication or may obtain the medication but may decide not
3 to take it.

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

7 (j) “Medically confirmed” means the medical opinion of the
8 attending physician has been confirmed by a consulting physician
9 who has examined the individual and the individual’s relevant
10 medical records.

11 (k) “Physician” means a doctor of medicine or osteopathy
12 currently licensed to practice medicine in this state.

13 (l) “Public place” means any street, alley, park, public building,
14 any place of business or assembly open to or frequented by the
15 public, and any other place that is open to the public view, or to
16 which the public has access.

17 (m) “Qualified individual” means a competent adult who is a
18 resident of California and has satisfied the requirements of this
19 part in order to obtain a prescription for medication to end his or
20 her life.

21 (n) “Self-administer” means a qualified individual’s affirmative,
22 conscious, and physical act of using the medication to bring about
23 his or her own death.

24 (o) “~~Terminal illness~~ *disease*” means an incurable and
25 irreversible ~~illness~~ *disease* that has been medically confirmed and
26 will, within reasonable medical judgment, result in death within
27 six months.

28 443.2. (a) A competent, qualified individual who is ~~a~~
29 ~~terminally ill adult~~ *an adult with a terminal disease* may make a
30 request to receive a prescription for aid-in-dying medication if all
31 of the following conditions are satisfied:

32 (1) The qualified individual’s attending physician has
33 determined the individual to be suffering from a ~~terminal illness~~.
34 *disease*.

35 (2) The qualified individual has voluntarily expressed the wish
36 to receive a prescription for aid-in-dying medication.

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

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

1 (B) Registration to vote in California.

2 (C) Evidence that the person owns or leases property in
3 California.

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

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

7 (b) A person may not qualify under the provisions of this part
8 solely because of age or disability.

9 (c) A request for a prescription for aid-in-dying medication
10 under this part shall not be made on behalf of the patient through
11 a power of attorney, an advance health care directive, or a
12 conservator.

13 443.3. (a) A qualified individual wishing to receive a
14 prescription for aid-in-dying medication pursuant to this part shall
15 submit two oral requests, a minimum of 15 days apart, and a written
16 request to his or her attending physician. *The attending physician*
17 *must receive all three requests required pursuant to this section.*

18 (b) A valid written request for aid-in-dying medication under
19 subdivision (a) shall meet all of the following conditions:

20 (1) The request shall be in substantially the form described in
21 Section 443.9.

22 (2) The request shall be signed and ~~dated~~ *dated, in the presence*
23 *of two witnesses in accordance with paragraph (3),* by the qualified
24 individual seeking the medication.

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

29 (A) Competent.

30 (B) Acting voluntarily.

31 (C) Not being coerced to sign the request.

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

34 (1) Be related to the qualified individual by blood, marriage, or
35 adoption or be entitled to a portion of the person's estate upon
36 death.

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

1 (d) The attending physician of the qualified individual shall not
2 be one of the witnesses required pursuant to paragraph (3) of
3 subdivision (b).

4 443.4. (a) A qualified individual may at any time rescind his
5 or her request for aid-in-dying medication without regard to the
6 qualified individual's mental state.

7 (b) A prescription for aid-in-dying medication provided under
8 this part may not be written without the attending physician
9 offering the qualified individual an opportunity to rescind the
10 request.

11 443.5. (a) Before prescribing aid-in-dying medication, the
12 attending physician shall do all of the following:

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

14 (A) Whether the requesting adult is competent.

15 (B) Whether the requesting adult has a terminal ~~illness~~ *disease*.

16 (C) Whether the requesting adult has voluntarily made the
17 request for aid-in-dying medication pursuant to Sections 443.2
18 and 443.3.

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

21 (2) Ensure the qualified individual is making an informed
22 decision by discussing with him or her all of the following:

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

24 (B) The potential risks associated with taking the aid-in-dying
25 medication to be prescribed.

26 (C) The probable result of taking the aid-in-dying medication
27 to be prescribed.

28 (D) The possibility that he or she may choose to obtain the
29 *aid-in-dying* medication but not take it.

30 (E) The feasible alternatives or additional treatment
31 opportunities, including, but not limited to, comfort care, hospice
32 care, palliative care, and pain control.

33 (3) Refer the qualified individual to a consulting physician for
34 medical confirmation of the ~~diagnosis~~, *diagnosis and* prognosis,
35 and for a determination that the qualified individual is competent
36 and has complied with the provisions of this part.

37 (4) Refer the qualified individual for counseling if appropriate.
38 *No aid-in-dying medication shall be prescribed until the person*
39 *performing the counseling determines that the patient is not*

1 *suffering from a psychiatric or psychological disorder or*
2 *depression causing impaired judgment.*

3 (5) Ensure that the qualified individual's request does not arise
4 from coercion or undue influence by another ~~person~~. *person by*
5 *discussing with the qualified individual, outside of the presence*
6 *of any other persons, whether or not the qualified individual is*
7 *feeling coerced or unduly influenced by another person.*

8 (6) Counsel the qualified individual about the importance of all
9 of the following:

10 (A) Having another person present when he or she takes the
11 aid-in-dying medication prescribed pursuant to this part.

12 (B) Not taking the aid-in-dying medication in a public place.

13 (C) *Notifying the next of kin of his or her request for aid-in-dying*
14 *medication. A qualified individual who declines or is unable to*
15 *notify next of kin shall not have his or her request denied for that*
16 *reason.*

17 (D) *Participating in a hospice program.*

18 (7) Inform the qualified individual that he or she may rescind
19 the request for aid-in-dying medication at any time and in any
20 manner.

21 (8) Offer the qualified individual an opportunity to rescind the
22 request for *aid-in-dying* medication before prescribing the
23 aid-in-dying medication.

24 (9) Verify, immediately prior to writing the prescription for
25 *aid-in-dying* medication, that the qualified individual is making
26 an informed decision.

27 (10) Ensure that all appropriate steps are carried out in
28 accordance with this part before writing a prescription for
29 aid-in-dying medication.

30 (11) Fulfill the record documentation ~~that may be required under~~
31 ~~Section 443.16. Sections 443.16 and 443.19.~~

32 (b) If the conditions set forth in subdivision (a) are satisfied,
33 the attending physician may deliver the aid-in-dying medication
34 in any of the following ways:

35 (1) Dispense aid-in-dying medications directly, including
36 ancillary medication intended to minimize the qualified individual's
37 discomfort, if the attending physician meets all of the following
38 criteria:

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

1 (B) Has a current United States Drug Enforcement
2 Administration (USDEA) certificate.

3 (C) Complies with any applicable administrative rule or
4 regulation.

5 (2) With the qualified individual's written consent, the attending
6 physician may contact a pharmacist, inform the pharmacist of the
7 prescriptions, and deliver the written prescriptions personally, by
8 mail, or electronically to the pharmacist, who may dispense the
9 medications to the qualified individual, the attending physician,
10 or a person expressly designated by the qualified individual and
11 with the designation delivered to the pharmacist in writing or
12 verbally.

13 (c) Delivery of the dispensed medication to the qualified
14 individual, the attending physician, or a person expressly
15 designated by the qualified individual may be made by: personal
16 delivery, United Parcel Service, United States Postal Service,
17 Federal Express, or by messenger ~~service~~; *service with a signature*
18 *required at delivery*.

19 443.6. Prior to a qualified individual obtaining aid-in-dying
20 medication from the attending physician, the consulting physician
21 shall perform all of the following:

22 (a) Examine the qualified individual and his or her relevant
23 medical records.

24 (b) Confirm in writing the attending physician's diagnosis and
25 prognosis.

26 (c) Verify, in the opinion of the consulting physician, that the
27 qualified individual is competent, acting voluntarily, and has made
28 an informed decision.

29 (d) Fulfill the record documentation ~~that may be required under~~
30 ~~Section 443.16. Sections 443.16 and 443.19.~~

31 443.7. (a) Unless otherwise prohibited by law, the attending
32 physician may sign the qualified individual's death certificate.

33 (b) ~~The cause of death listed on an individual's death certificate~~
34 ~~who uses aid-in-dying medication~~ *the death certificate of an*
35 *individual who uses aid-in-dying medication* shall be the underlying
36 ~~terminal illness.~~ *disease*.

37 443.8. A qualified individual may not receive a prescription
38 for aid-in-dying medication pursuant to this part, unless he or she
39 has made an informed decision. Immediately before writing a
40 prescription for aid-in-dying medication under this part, the

1 attending physician shall verify that the individual is making an
2 informed decision.

3 443.9. (a) A request for aid-in-dying medication as authorized
4 by this part shall be in substantially the following form:

5
6 REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND
7 DIGNIFIED MANNER I,, am an adult of
8 sound mind and a resident of the State of California.

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

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

16 I request that my attending physician prescribe medication that will end my
17 life in a humane and dignified manner if I choose to take it, and I authorize
18 my attending physician to contact any pharmacist about my request.

19 INITIAL ONE:
20 I have informed one or more members of my family of my decision
21 and taken their opinions into consideration.

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

23 I have no family to inform of my decision.

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

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

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

30

31 Signed:.....

32 Dated:.....

33

34

35 DECLARATION OF WITNESSES

36 We declare that the person signing this request:

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

38 (b) signed this request in our presence;

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

1 (d) is not an individual for whom either of us is the attending physician.

2Witness 1/Date

3Witness 2/Date

4 NOTE: Only one of the two witnesses may be a relative (by blood, marriage,
5 or adoption) of the person signing this request or be entitled to a portion of the
6 person’s estate upon death. Only one of the two witnesses may own, operate
7 or be employed at a health care facility where the person is a patient or resident.

8
9 (b) (1) The written language of the request shall be written in
10 the same translated language as any conversations, consultations,
11 or interpreted conversations or consultations between a patient and
12 his or her attending or consulting physicians.

13 (2) Notwithstanding paragraph (1), the written request may be
14 prepared in English even where the conversations or consultations
15 or interpreted conversations or consultations where conducted in
16 a language other than English if the English language form includes
17 an attached interpreter’s declaration that is signed under penalty
18 of perjury. The interpreter’s declaration shall state words to the
19 effect that:

20
21 I (INSERT NAME OF INTERPRETER), am fluent in English and (INSERT
22 TARGET LANGUAGE).

23 On (insert date) at approximately (insert time), I read the “Request for
24 Medication to End My Life” to (insert name of individual/patient) in (insert
25 target language).

26 Mr./Ms. (insert name of patient/qualified individual) affirmed to me that he/she
27 understood the content of this form and affirmed his/her desire to sign this
28 form under his/her own power and volition and that the request to sign the
29 form followed consultations with an attending and consulting physician.

30 I declare that I am fluent in English and (insert target language) and further
31 declare under penalty of perjury that the foregoing is true and correct.

32 Executed at (insert city, county, and state) on this (insert day of month) of
33 (insert month), (insert year).

34 X_____Interpreter signature

35 X_____Interpreter printed name

36 X_____Interpreter address

37
38 (3) An interpreter provided by paragraph (2) shall not be related
39 to the qualified individual by blood, marriage, or adoption or be
40 entitled to a portion of the person’s estate upon death. An

1 interpreter provided by paragraph (2) shall be qualified as described
2 in subparagraph (H) of paragraph (2) of subdivision (c) of Section
3 1300.67.04 of Title 28 of the California Code of Regulations. *meet*
4 *the standards promulgated by the California Healthcare*
5 *Interpreters Association or the National Council on Interpreting*
6 *in Healthcare or other standards deemed acceptable for health*
7 *care providers in California.*

8 443.10. (a) A provision in a contract, will, or other agreement,
9 whether written or oral, to the extent the provision would affect
10 whether a person may make or rescind a request for aid-in-dying
11 medication, is not valid.

12 (b) An obligation owing under any contract in effect on *or after*
13 January 1, 2016, may not be conditioned or affected by a qualified
14 individual making or rescinding a request for aid-in-dying
15 medication.

16 443.11. (a) The sale, procurement, or issuance of a life, health,
17 accident insurance or annuity policy, health care service plan
18 contract, or health benefit plan, or the rate charged for a policy or
19 plan contract may not be conditioned upon or affected by a person
20 making or rescinding a request for aid-in-dying medication.

21 (b) Notwithstanding any other law, a qualified individual's act
22 of self-administering aid-in-dying medication may not have an
23 effect upon a life, health, or accident insurance or annuity policy
24 other than that of a natural death from the underlying ~~illness.~~
25 *disease.*

26 (c) *An insurance carrier shall not provide any information in*
27 *communications made to an individual about the availability of*
28 *aid-in-dying medication absent a request by the individual, his or*
29 *her attending physician at the behest of the individual, or the*
30 *individual's designee. Any communication shall not include both*
31 *the denial of treatment and information as to the availability of*
32 *aid-in-dying medication coverage. For the purposes of this*
33 *subdivision, "insurance carrier" means a health care service plan*
34 *pursuant to Section 1345 or a health insurer pursuant to Section*
35 *106 of the Insurance Code.*

36 443.12. (a) Notwithstanding any other law, a person shall not
37 be subject to civil or criminal liability or professional disciplinary
38 action for participating in good faith compliance with this part,
39 including an individual who is present when a qualified individual
40 self-administers the prescribed aid-in-dying medication.

1 (b) A health care provider or professional organization or
2 association ~~may shall~~ not subject an individual to censure,
3 discipline, suspension, loss of license, loss of privileges, loss of
4 membership, or other penalty ~~for participating or refusing to~~
5 ~~participate in good faith compliance with this part.~~ *for participating*
6 *in good faith compliance with this part or for refusing to*
7 *participate in accordance with subdivision (d).*

8 (e) ~~A request by an individual to an attending physician or to a~~
9 ~~pharmacist to dispense aid-in-dying medication or provide~~
10 ~~aid-in-dying medication in good faith compliance with the~~
11 ~~provisions of this part does not constitute neglect or elder abuse~~
12 ~~for any purpose of law or provide the sole basis for the appointment~~
13 ~~of a guardian or conservator.~~

14 (c) (1) *A request by a qualified individual to an attending*
15 *physician to provide aid-in-dying medication in good faith*
16 *compliance with the provisions of this part shall not provide the*
17 *sole basis for the appointment of a guardian or conservator.*

18 (2) *A request by an individual to a pharmacist to dispense*
19 *aid-in-dying medication in good faith compliance with the*
20 *provisions of this part shall not constitute neglect or elder abuse*
21 *for any purpose of law.*

22 (d) (1) Participation in activities authorized pursuant to this
23 part shall be voluntary. A person or entity that elects, for reasons
24 of conscience, morality, or ethics, not to engage in activities
25 authorized pursuant to this part is not required to take any action
26 in support of a patient's decision under this part, except as
27 ~~otherwise required by law.~~ *required by Sections 442 through 442.7,*
28 *inclusive.*

29 (2) If a health care provider is unable or unwilling to carry out
30 ~~an~~ *a qualified individual's* request under this part and the *qualified*
31 individual transfers care to a new health care provider, the prior
32 health care provider shall transfer, upon request, a copy of the
33 *qualified individual's* relevant medical records to the new health
34 care provider.

35 (e) (1) *Subject to paragraph (2), notwithstanding any other*
36 *law, a health care provider may prohibit its employees,*
37 *independent contractors, or other persons or entities, including*
38 *other health care providers, from participating in activities under*
39 *this part while on premises owned or under the management or*
40 *direct control of that prohibiting health care provider or while*

1 acting within the course and scope of any employment by, or
2 contract with, the prohibiting health care provider.

3 (2) A health care provider that elects to prohibit its employees,
4 independent contractors, or other persons or entities, including
5 health care providers, from participating in activities under this
6 part, as described in paragraph (1), shall first give notice of the
7 policy prohibiting participation in this part to the individual or
8 entity. A health care provider that fails to provide notice to an
9 individual or entity in compliance with this paragraph shall not
10 be entitled to enforce such a policy against that individual or entity.

11 (3) Subject to compliance with paragraph (2), the prohibiting
12 health care provider may take action, including, but not limited
13 to, the following, as applicable, against any individual or entity
14 that violates this policy:

15 (A) Loss of privileges, loss of membership, or other action
16 authorized by the bylaws or rules and regulations of the medical
17 staff.

18 (B) Suspension, loss of employment, or other action authorized
19 by the policies and practices of the prohibiting health care
20 provider.

21 (C) Termination of any lease or other contract between the
22 prohibiting health care provider and the individual or entity that
23 violates the policy.

24 (D) Imposition of any other nonmonetary remedy provided for
25 in any lease or contract between the prohibiting health care
26 provider and the individual or entity in violation of the policy.

27 (4) Nothing in this subdivision shall be construed to prevent,
28 or to allow a prohibiting health care provider to prohibit any other
29 health care provider, employee, independent contractor, or other
30 person or entity from any of the following:

31 (A) Participating, or entering into an agreement to participate,
32 in activities under this part, while on premises that are not owned
33 or under the management or direct control of the prohibiting
34 provider or while acting outside the course and scope of the
35 participant's duties as an employee of, or an independent
36 contractor for, the prohibiting health care provider.

37 (B) Participating, or entering into an agreement to participate,
38 in activities under this part as an attending physician or consulting
39 physician while on premises that are not owned or under the
40 management or direct control of the prohibiting provider.

1 (5) *In taking actions pursuant to paragraph (3), a health care*
2 *provider shall comply with all procedures required by law, its own*
3 *policies or procedures, and any contract with the individual or*
4 *entity in violation of the policy, as applicable.*

5 (6) *For purposes of this subdivision:*

6 (A) *“Notice” means a separate statement in writing advising*
7 *of the prohibiting health care provider policy with respect to*
8 *participating in activities under this part.*

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

12 (i) *Performing the duties of an attending physician specified in*
13 *Section 443.5.*

14 (ii) *Performing the duties of a consulting physician specified in*
15 *Section 443.6.*

16 (iii) *Delivering the prescription for, dispensing, or delivering*
17 *the dispensed aid-in-dying medication pursuant to paragraph (2)*
18 *of subdivision (b) of, and subdivision (c) of, Section 443.5.*

19 (iv) *Being present when the qualified individual takes the*
20 *aid-in-dying medication prescribed pursuant to this part.*

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

24 (i) *Making an initial determination that a patient has a terminal*
25 *illness and informing the patient of the medical prognosis.*

26 (ii) *Providing information to a patient about the End of Life*
27 *Option Act.*

28 (iii) *Providing a patient, upon the patient’s request, with a*
29 *referral to another health care provider for the purposes of*
30 *participating in the activities authorized by the End of Life Option*
31 *Act.*

32 (7) *Any action taken by a prohibiting provider pursuant to this*
33 *subdivision shall not be reportable under Sections 800 through*
34 *809.9, inclusive, of the Business and Professions Code. The fact*
35 *that a health care provider participates in activities under this*
36 *part shall not be the sole basis for a complaint or report by another*
37 *health care provider of unprofessional or dishonorable conduct*
38 *under Sections 800 through 809.9, inclusive, of the Business and*
39 *Professions Code.*

40 (e)

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

4 443.13. (a) A health care provider may not be sanctioned for
5 any of the following:

6 ~~(a)~~

7 (1) Making an initial determination pursuant to the standard of
8 care that an individual has a terminal illness ~~and~~ *disease* and informing
9 him or her of the medical prognosis.

10 ~~(b)~~

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

13 ~~(c)~~

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

16 ~~(d) Contracting with an individual to act outside the course and
17 scope of the provider's capacity as an employee or independent
18 contractor of a health care provider that prohibits activities under
19 this part.~~

20 (b) *A health care provider that prohibits activities under this
21 part in accordance with subdivision (e) of Section 443.12 shall
22 not sanction an individual health care provider for contracting
23 with a qualified individual to engage in activities authorized by
24 this part if the individual health care provider is acting outside of
25 the course and scope of his or her capacity as an employee or
26 independent contractor of the prohibiting health care provider.*

27 ~~(e)~~

28 (c) Notwithstanding any contrary provision in this section, the
29 immunities and prohibitions on sanctions of a health care provider
30 are solely reserved for actions taken pursuant to this part and those
31 health care providers may be sanctioned for conduct and actions
32 not included and provided for in this part if the conduct and actions
33 do not comply with the standards and practices set forth by the
34 Medical Board of California.

35 443.14. (a) Knowingly altering or forging a request for
36 *aid-in-dying* medication to end an individual's life without his or
37 her authorization or concealing or destroying a rescission of a
38 request for *aid-in-dying* medication is punishable as a felony if the
39 act is done with the intent or effect of causing the individual's
40 death.

1 (b) Knowingly coercing or exerting undue influence on an
2 individual to request *aid-in-dying* medication for the purpose of
3 ending his or her life or to destroy a rescission of a request is
4 punishable as a felony.

5 (c) For purposes of this section, “knowingly” has the meaning
6 provided in Section 7 of the Penal Code.

7 (d) Nothing in this section ~~limits further liability for civil~~
8 ~~damages resulting from other negligent conduct or intentional~~
9 ~~misconduct by any person.~~ *shall be construed to limit civil liability.*

10 (e) The penalties in this section do not preclude criminal
11 penalties applicable under any law for conduct inconsistent with
12 the provisions of this part.

13 443.15. Nothing in this part may be construed to authorize a
14 physician or any other person to end an individual’s life by lethal
15 injection, mercy killing, or active euthanasia. Actions taken in
16 accordance with this part shall not, for any purposes, constitute
17 suicide, assisted suicide, mercy killing, homicide, or elder abuse
18 under the law.

19 443.16. (a) ~~The State Public Health Officer, in consultation~~
20 ~~with the State Department of Social Services, Officer shall annually~~
21 ~~review a sample of records maintained pursuant to Section 443.19~~
22 ~~and shall adopt regulations establishing additional reporting~~
23 ~~requirements for physicians and pharmacists pursuant to this part.~~

24 (b) The reporting requirements shall be designed to collect
25 information to determine utilization and compliance with this part.
26 The information collected shall be confidential and shall be
27 collected in a manner that protects the privacy of the patient, the
28 patient’s family, and any medical provider or pharmacist involved
29 with the patient under the provisions of this part.

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

36 443.17. A person who has custody or control of any unused
37 aid-in-dying medication prescribed pursuant to this part after the
38 death of the patient shall personally deliver the unused aid-in-dying
39 medication for disposal by delivering it to the nearest qualified

1 facility that properly disposes of controlled substances, or if none
2 is available, shall dispose of it by lawful means.

3 443.18. Any governmental entity that incurs costs resulting
4 from a qualified individual terminating his or her life pursuant to
5 the provisions of this part in a public place shall have a claim
6 against the estate of the qualified individual to recover those costs
7 and reasonable attorney fees related to enforcing the claim.

8 443.19. *All of the following shall be documented in the*
9 *individual's medical record:*

10 (a) *All oral requests for aid-in-dying medication.*

11 (b) *All written requests for aid-in-dying medication.*

12 (c) *The attending physician's diagnosis and prognosis,*
13 *determination that a qualified individual is competent, acting*
14 *voluntarily, and has made an informed decision, or that the*
15 *attending physician has determined that the individual is not a*
16 *qualified individual.*

17 (d) *The consulting physician's diagnosis and prognosis, and*
18 *verification that the qualified individual is competent, acting*
19 *voluntarily, and has made an informed decision, or that the*
20 *consulting physician has determined that the individual is not a*
21 *qualified individual.*

22 (e) *A report of the outcome and determinations made during*
23 *counseling, if performed.*

24 (f) *The attending physician's offer to the qualified individual*
25 *to rescind his or her request at the time of the qualified individual's*
26 *second oral request.*

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

31 SEC. 2. The Legislature finds and declares that Section 1 of
32 this act, which adds Section 443.16 to the Health and Safety Code,
33 imposes a limitation on the public's right of access to the meetings
34 of public bodies or the writings of public officials and agencies
35 within the meaning of Section 3 of Article I of the California
36 Constitution. Pursuant to that constitutional provision, the
37 Legislature makes the following findings to demonstrate the interest
38 protected by this limitation and the need for protecting that interest:

39 (a) Any limitation to public access to personally identifiable
40 patient data collected pursuant to Section 443.16 of the Health and

1 Safety Code as proposed to be added by this act is necessary to
2 protect the privacy rights of the patient and his or her family.

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

7 (c) The statistical report to be made available to the public
8 pursuant to subdivision (c) of Section 443.16 of the Health and
9 Safety Code is sufficient to satisfy the public's right to access.

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

14 SEC. 4. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.