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HEALTHCARE LAWYERS

California’s New Aid-In-Dying Law Gets Tested, Providers Fail to Earn High Marks

California is among five states that permit physician-assisted suicide (the others are Oregon, Washington, Montana, and Vermont; Colorado may become the sixth if voters endorse legislation in the November election). But California is larger and more populous than the others, and therefore is likely to encounter unique challenges when it comes to terminally ill patients exercising their right to obtain a lethal drug prescription. The End of Life Option Act took effect on June 9th in California, and it’s already being tested.

Even when it comes to the raw comparative numbers, California will be different. In the other four states, a very low percentage of patients have sought medical help in ending their lives, and an even lower percentage took the next step to actually terminate their lives. Even if the terminally ill in California avail themselves of the law at a comparably low rate to that of patients in Oregon, for example, the number of deaths per year would be over 800. That many deaths, even when legally permitted on a state level, are likely to come with unanticipated challenges and a high degree of scrutiny.

Do insurance obstacles and physician reservations prevent compassionate choices?

Compassion & Choices is a not-for-profit group that supports the law. Kat West, the group’s national director of policy and programs, said she knows of 25 lethal prescriptions written in California thus far, though she suspects the true number is double or even triple that. She notes that one potential knotty issue is that the barbiturate Seconal used in the lethal prescription, while covered by most major private insurers, is not covered by Medicare (federal law prohibits Medicare from covering it). It can cost as much as $3,000, so that prohibition may impede terminally-ill patients enrolled in government-funded insurance plans from exercising this choice.

Indeed, this issue was mentioned in Linda Van Zandt’s Los Angeles Times op-ed piece about her terminally ill aunt’s decision to end her life and the ensuing obstacles she faced with healthcare providers and the healthcare system. The lethal Seconal prescription was not covered by the 69-year-old San Diego resident’s Kaiser Permanente Medicare Advantage plan, despite the fact that it would have been covered under a private Kaiser plan.

But Van Zandt reports that her aunt’s journey to end her struggle with the debilitating symptoms of ALS was strewn with impediments well before that point. The law stipulates that the patient must ingest the medicine that ends his/her life without assistance, and therefore this requires that the person be mentally competent and conscious. But Van Zandt’s aunt (whom Van Zandt chose not to name) was finding it increasingly difficult to swallow, and she worried that that would disqualify her under the aforementioned rule.

The stress of a painful, difficult period is compounded by unresponsive providers

According to Van Zandt, neither of the Kaiser Permanente neurologists that treated her aunt returned the woman's calls when she was seeking help under the aid-in-dying law. The End of Life Option Act mandates that two doctors independently conclude that adult patients who request assistance under the Act are mentally competent and are making a voluntary, informed decision. Further, both physicians must believe that the individual's remaining lifespan is six months or less.

Because the woman never received help from her own doctors, Van Zandt says she took it upon herself to try for days—without success—to find another physician to begin the process for her aunt. Ultimately, she found a hospice doctor and then the required second doctor for certification, but at that point another requirement kicked in: a waiting period designed for the patient to reflect and then to reaffirm that s/he indeed did want to receive the lethal prescription of the barbiturate. “We were in a serious race against her symptoms,” Van Zandt said.

Although Van Zandt's aunt received the lethal prescription last month and was able to take it on her own as the law requires, her niece describes all the stress that led up to that day as “fraught and frightening.”

West says that Van Zandt's story “makes me very sad and angry, mostly because the patient's own doctor and healthcare team abandoned her during her time of great need.” She sees a brighter future, though, and expects that these types of unnecessary struggles against the system will become less frequent as medical aid in dying “becomes normalized into the standard of medical care.”

California may face a shortage of doctors participating in the law

Dr. Terrell VanAken is medical director for hospice and palliative care at NorthBay Health Care in Fairfield, California. He predicts that it will be challenging for patients in the state to find doctors participating in the law (participation is left to the physician's discretion), especially in rural areas. VanAken notes that he is one of only three participating doctors out of more than two hundred at NorthBay.

Referring to Van Zandt's aunt's difficulty in finding medical assistance: “I'm not surprised that patient had a hard time finding a participating doctor,” VanAken says.
Doctors “are not coming out of the woodwork to participate,” he adds. “It's a lot like hospice. They don't want to mess with Schedule 2 narcotics and symptom management. But they should obviously answer the phone when their patient calls.”

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