

Frequently Asked Questions about the Death with Dignity Act

In 1997, Oregon enacted the Death with Dignity Act (DWDA), allowing terminally ill individuals to end their lives through the voluntary self-administration of a lethal dose of medication, expressly prescribed by a physician for that purpose. The DWDA requires the Oregon Health Authority to collect data on DWDA participation and issue an annual report. Our position is a neutral one, and we believe these data are important to parties on both sides of the issue. While it is not our role to interpret the DWDA, we routinely receive inquiries about the law. Below are answers to some frequently asked questions.

Q: What is Oregon's Death with Dignity Act?

A: The Death with Dignity Act (DWDA) is a permissive law that allows terminally ill individuals to end their lives through the voluntary self-administration of a lethal dose of medication, expressly prescribed by a physician for that purpose.

The DWDA was a citizens' initiative passed twice by Oregon voters. The first time was in a general election in November 1994 when it passed by a margin of 51% to 49%. An injunction delayed implementation of the DWDA until it was lifted on October 27, 1997. In November 1997, a measure was placed on the general election ballot to repeal the DWDA. Voters chose to retain the DWDA by a margin of 60% to 40%.

There is no state "program" for participation in the DWDA. People do not "make an application" to the State of Oregon or the Oregon Health Authority. It is up to qualified patients and licensed physicians to implement the DWDA on an individual basis. No one is compelled to participate. The DWDA requires the Oregon Health Authority to collect data about DWDA participation and to issue an annual report.

Q: Are there any other states that have similar legislation?

A: Yes. The Death with Dignity National Center, which advocates for the passage of death with dignity laws, tracks the status of these laws around the country. Visit its website at <https://www.deathwithdignity.org/take-action>.

Q: Who can participate in the DWDA?

A: To participate, a patient must be: (1) 18 years of age or older, (2) capable of making and communicating health care decisions for him/herself, and (3) diagnosed with a terminal illness that will lead to death within six months. It is up to the attending physician to determine whether these criteria have been met.

As of March 2022, the Oregon Health Authority is no longer enforcing the DWDA's residency requirement.

Q: Are participating patients reported to the Oregon Health Authority by name?

A: The State does collect the names of patients in order to cross-check death certificates. However, the law guarantees the confidentiality of all participating patients (as well as physicians) and the Oregon Health Authority does not release this information to the public or media. The identity of

participating physicians is coded, but the identity of individual patients is not recorded in any manner. Approximately one year from the publication of the annual report, all source documentation is destroyed.

Q: Who can write a prescription for a patient under the DWDA?

A: Patients who meet certain criteria can request a prescription for lethal medication from a licensed Oregon physician. The physician must be a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) licensed to practice medicine by the Oregon Medical Board. The physician must also be willing to participate in the DWDA. Physicians are not required to provide prescriptions to patients, and participation is voluntary. Additionally, some health care systems (for example, a Catholic hospital or the Veteran's Administration) have prohibitions against participating in the DWDA.

Q: If a patient's doctor does not participate in the DWDA, how can the patient get a prescription?

A: The patient must find another M.D. or D.O. licensed to practice medicine in Oregon who is willing to participate. The Oregon Health Authority does not recommend doctors, nor do we provide the names of participating physicians or patients due to the need to protect confidentiality.

Q: How does a patient get a prescription from a participating physician?

A: The patient must meet specific criteria to be able to participate in the DWDA. Then, the following steps must be fulfilled:

- 1) The patient must make two oral requests to the attending physician, separated by at least 15 days. Patients with 15 days or less to live are exempt from this waiting period.
- 2) The patient must provide a written request to the attending physician, signed in the presence of two witnesses, at least one of whom is not related to the patient.
- 3) The attending physician and a consulting physician must confirm the patient's diagnosis and prognosis.
- 4) The attending physician and a consulting physician must determine whether the patient is capable of making and communicating health care decisions for him/herself.
- 5) If either physician believes the patient's judgment is impaired by a psychiatric or psychological disorder (such as depression), the patient must be referred for a psychological examination.
- 6) The attending physician must inform the patient of feasible alternatives to the DWDA including comfort care, hospice care, and pain control.
- 7) The attending physician must request, but may not require, the patient to notify their next-of-kin of the prescription request.

A patient can rescind a request at any time and in any manner. The attending physician will also offer the patient an opportunity to rescind his/her request at the end of the waiting period following the initial request to participate.

Physicians must report all prescriptions for lethal medications to the Oregon Health Authority, Center for Health Statistics. Pharmacists must also be informed of the prescribed medication's ultimate use.

Q: Are there any exemptions to the waiting periods in the DWDA?

A: Starting January 1, 2020, patients are exempt from any waiting period that exceeds their life expectancy. Patients with less than 15 days to live are exempt from the 15-day waiting period between the first and second oral requests for medication. Patients with less than 48 hours to live are exempt from the 48-hour waiting period between the patient's written request and the writing of the DWDA prescription. The Attending Physician must file a medically confirmed certification of the imminence of the patient's death with the patient's medical record if any of the statutory waiting periods are not completed.

Q: What kind of prescription will a patient receive?

A: It is up to the physician to determine the prescription.

Q: Who is responsible for oversight and regulation of the DWDA process?

A: The law does not include any oversight or regulation that is distinct from what is done for other medical care. The DWDA assigned the Oregon Health Authority (OHA) the responsibility of keeping track of data on participation and issuing an annual report, but did not assign any specific regulatory responsibilities. OHA does not investigate whether patients met the DWDA criteria, nor how their diagnosis, prognosis, and treatment options were determined. OHA does not interpret the statute, other than the portion related to the reporting requirements. However, if any instances of non-compliance are found in the information received by OHA, it is reported to the Oregon Medical Board for further investigation.

Q: What will happen if a physician doesn't follow the prescribing or reporting requirements of the DWDA?

A: The Oregon Health Authority will notify the Oregon Medical Board of any deviations noted in the information received. If a formal investigation is warranted by the Oregon Medical Board, physicians might be subject to disciplinary action.

Q: Must a physician be present at the time the medications are taken?

A: The law does not require the presence of a physician when a patient takes the lethal medication. A physician must be present if a patient wishes it, as long as the physician does not administer the medication him/herself.

All patients are encouraged to complete a Physician Orders for Life-Sustaining Treatment (POLST) form and register with the Oregon POLST registry (see: <http://www.orpolstregistry.org/>). A POLST form records your wishes for medical treatment in the event emergency medical services are called. It allows you to state that you do not wish to be resuscitated if you are found unresponsive, or if the lethal medication does not work as expected. POLST forms are available from your physician, who must sign and date your POLST before it can be used.

Q: Can a patient rescind a request to participate in the DWDA?

A: Yes, a patient can rescind a request at any time and in any manner. The attending physician will also offer the patient an opportunity to rescind his/her request at the end of the waiting period following the initial request to participate.

Q: How much does participation cost?

A: We do not collect cost data. However, direct costs for participation in the DWDA might include office visits relating to the request, a psychological consult (if required), and the cost of the prescription.

Q: Will insurance cover the cost of participation in the DWDA?

A: The DWDA does not specify who must pay for the services. Individual insurers determine whether the procedure is covered under their policies (just as they do with any other medical procedure). Oregon statute specifies that participation under the DWDA is not suicide, and should not affect insurance benefits by that definition.

Q: Can a patient's family members request participation in the DWDA on behalf of the patient (for example, in cases where the patient is comatose)?

A: No. The law requires that the patient ask to participate voluntarily on his or her own behalf.

Q: Does the DWDA allow euthanasia?

A: No. In euthanasia, a doctor typically *administers* a lethal dose of medication to the patient. In the DWDA, a physician *prescribes* a lethal dose of medication to a patient, but the patient – not the doctor – administers the medication. Euthanasia is illegal in every U.S. state, including Oregon.

Q: What is the Oregon Health Authority's opinion of the DWDA?

A: Our position is a neutral one, and we offer no interpretation or opinion about the law. The DWDA was a citizen's initiative, enacted because a majority of voting Oregonians believed that persons afflicted with certain terminal illnesses should have the legal right to hasten their deaths. The role of the Oregon Health Authority is to collect data on participation in the DWDA and issue an annual report. These data are important to parties on both sides of the issue.

Q: What is listed as the cause of death on death certificates for patients who die under the Death with Dignity Act?

A: The Oregon Health Authority, Center for Health Statistics recommends that physicians record the underlying terminal disease as the cause of death and mark the manner of death "natural". This is intended to balance the confidentiality of patients and their families, while ensuring that we have complete information for statistical purposes.

A death certificate is a legal document that has two primary purposes: (1) to certify the occurrence of death for legal matters (e.g., settling the estate), and (2) to document causes of death for public health statistics. To ensure that we have accurate and complete data on patients who have ingested the medications, the Oregon Health Authority regularly matches the names of persons for whom a DWDA prescription is written with death certificates. The Attending Physician is then required to

complete a follow-up form with information about whether the death resulted from ingesting the medications, or from the underlying disease.

Q: Where can I find a copy of the statutes and administrative rules governing the Death with Dignity Act?

A: The statutes can be found at:

<http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx>

The administrative rules can be found at:

<http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/oars.aspx>

Q: Where can I find the forms used for the DWDA?

A: The forms can be found at:

<http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/pasforms.aspx>