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## End of Life Option Act Services

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Page updated: August 2020

This section includes End of Life Option Act (ELOA) policy and billing information for Medi-Cal providers who voluntarily participate in the End of Life Option Act (the Act) by delivering medical, mental health and pharmacy services.

### **End of Life Option Act**

The End of Life Option Act is a California law that permits terminally ill adult recipients with the capacity to make medical decisions to be prescribed an aid-in-dying medication if certain conditions are met.

The law is outlined in California *Health and Safety Code* (H&S Code), Division 1, Part 1.85, Section 443.

### **End of Life Option Act Providers**

Providers are not required to participate in the program. Participation is voluntary. The Act contains requirements for the following providers:

- Attending physicians who have the primary responsibility for the health care of the recipient and treatment of the recipient's terminal illness.
- Consulting physicians who provide a second opinion. The Act requires recipients to see a second physician who can confirm the recipient's diagnosis, life expectancy and ability to make medical decisions.
- Mental health specialists: Psychiatrists and licensed psychologists who, at the request of the attending or consulting physician, help determine whether the recipient has the mental capacity to make medical decisions, act voluntarily and make an informed decision.
- Pharmacists who assist with dispensing physician-prescribed end of life medications.
- Rural Health Clinics (RHCs), Federally Qualified Health Centers (FQHCs), Indian Health Services Memorandum of Agreement (IHS/MOA) 638 clinics and standard outpatient clinics that render services similar to the preceding, but in a clinic setting.

Policy and billing instructions for each of the above are outlined in this section.

## Recipient Eligibility

Medi-Cal recipients must, at minimum, meet all of the following criteria:

- Be 18 years of age or older
- Have the capacity to make medical decisions
- Possess a valid Medi-Cal Benefits Identification Card (BIC) or valid Medi-Cal managed care plan (MCP) card
- Have a diagnosis from their attending physician of an incurable and irreversible disease which will, within reasonable medical judgment, result in death within six months
- Voluntarily request a prescription for an aid-in-dying drug

**Note:** Recipients who elect hospice care and meet the criteria above are also eligible for end of life services.

## Covered Services

The following end of life services are covered, fee-for-service only, as appropriate:

- Office visits in which the recipient makes an oral and/or written request to the attending physician for an aid-in-dying drug. See “Office Visits.”
- Office visit with a consulting physician to confirm the diagnosis and life expectancy.
- End of life prescription drugs.
- Psychiatrist or licensed psychologist office visits.

## Non-Covered Services

Routine office visits involving general discussions between a recipient and their physician (whether in a fee-for-service or managed care setting) regarding available medical options for addressing the terminal illness (for example, hospice, palliative care or aid-in-dying services) are not a covered end of life service.

## Office Visits

The following office visits are reimbursable when performed by a Medi-Cal-enrolled licensed physician (doctor of medicine or osteopathy):

- At least two visits with the attending physician including the following:
  - The recipient makes his or her first and second oral requests for an aid-in-dying drug.
  - The recipient makes a written request for an aid-in-dying drug.
  - The attending physician prescribes the drug(s), consistent with the requirements of the Act.

**Note:** More than one of the preceding actions rendered by the attending physician may be provided during the same visit. For example, both the written request and prescription may occur at the visit in which the recipient makes a second oral request for an aid-in-dying drug. Additional visits for discussion or counseling related to the Act are also covered.

- One visit with a consulting physician to confirm the terminal diagnosis and life expectancy of six months or less.
- If deemed necessary by the attending or consulting physician, up to two visits with a Medi-Cal-enrolled psychiatrist or licensed psychologist for a mental health assessment to determine if the recipient has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental health disorder.

## Attending Physician Responsibilities

Attending physicians must perform all of the following:

- Prior to prescribing aid-in-dying drugs, make an initial determination of all the following:
  - Whether the recipient has a terminal disease that will result in death in six months or less.
  - Whether the recipient has the capacity to make medical decisions. If there are indications of a mental disorder, refer the recipient for a mental health assessment. If a mental health specialist assessment referral is made, no aid-in-dying drugs may be prescribed until the mental health specialist determines the recipient has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

- Whether the recipient has voluntarily made the request for an aid-in-dying drug.
- Whether the recipient has the physical ability to self-administer the aid-in-dying drug.
- Confirm that the recipient is making an informed decision by discussing all of the following:
  - Medical diagnosis and prognosis.
  - Potential risks associated with ingesting the requested aid-in-dying drug(s).
  - Probable result of ingesting the aid-in-dying drug(s).
  - Option of obtaining the aid-in-dying drug(s) but not taking them.
  - Feasible alternatives or additional treatment options, including but not limited to:
    - ❖ Comfort care
    - ❖ Hospice care
    - ❖ Palliative care
    - ❖ Pain control
- Refer the recipient to a consulting physician for medical confirmation of the terminal diagnosis and life expectancy of six months or less and for a determination that the recipient is mentally competent to make medical decisions.
- Confirm that the recipient’s request does not arise from coercion or undue influence by another person by directly asking the recipient outside of the presence of any other persons (except for an interpreter as required pursuant to the Act), if he or she is feeling coerced or unduly influenced by another person.
- Counsel the recipient about the importance of all of the following:
  - Having another person present when he or she ingests the aid-in-dying drugs.
  - Not ingesting the aid-in-dying drugs in a public place.
  - Notifying the next of kin of his or her request for an aid-in-dying drug. The end of life request cannot be denied if a recipient declines to notify or is unable to notify next of kin.

- Participating in a hospice program.
- Maintaining the aid-in-dying drugs in a safe and secure location until the time the recipient will ingest them.
- The attending physician also must:
  - Inform the recipient that he or she may withdraw or rescind the request for an aid-in-dying drug at any time and in any manner.
  - Offer the recipient the ability to withdraw or rescind the request for an aid-in-dying drug before prescribing the aid-in-dying drug(s).
  - Ensure that the recipient made two oral requests for an aid-in-dying drug at least 15 days apart.
  - Verify, immediately before writing the prescription for aid-in-dying drugs, that the recipient is making an informed decision.
  - Ensure the recipient has given written consent for an aid-in-dying drug by completing the Request for an *Aid-In-Dying Drug to End My Life in a Humane and Dignified Manner* form (H&S Code, Section 443.11[a]) (available for download in a printable PDF on the “End of Life” Web page of the Medical Board of California [MBC] website: <http://www.mbc.ca.gov>).
  - Provide the recipient with the *Final Attestation for an Aid-In-Dying Drug to End My Life in a Humane and Dignified Manner* form and instruct him or her to complete this form as required by H&S Code, Section 443.11(c) (available for download in a printable PDF on the “End of Life” Web page of the Medical Board of California website: <http://www.mbc.ca.gov>).
  - Confirm that all requirements are met and all appropriate steps are carried out in accordance with the Act before writing a prescription for aid-in-dying drugs.

Medi-Cal may be billed for an aid-in-dying prescription only when the attending physician has obtained the recipient’s written consent and properly notified (by personal delivery, mail or electronically) the dispensing pharmacy and/or pharmacist, prior to dispensing of the actual prescription, that the prescription will be used for services under the Act.

### Delivery of Aid-in-Dying Drugs

An attending physician who meets the preceding conditions may deliver aid-in-dying drugs through any of the following methods:

- Attending physician dispenses the aid-in-dying drugs directly to the recipient, including ancillary drugs intended to minimize the recipient's discomfort. The physician must:
  - Be authorized to dispense medication under California law.
  - Have a current United States Drug Enforcement Administration (DEA) certificate.
  - Comply with any applicable administrative rules and regulations.
- Attending physician dispenses drugs with pharmacist assistance. The attending physician, with the recipient's written consent, may contact a pharmacist, inform the pharmacist of the prescriptions and deliver the written prescriptions personally, by mail or electronically to the pharmacist. Subsequently, the pharmacist dispenses the drugs to the recipient, the attending physician or a person expressly designated by the recipient and with the designation delivered to the pharmacist in writing or verbally.
- Attending physician directs personal, mail or messenger delivery. The aid-in-dying drug may be delivered via personal delivery or with a signature required on delivery by United Parcel Service of America, Inc. (UPS), United States Postal Service (USPS), Federal Express (FedEx) or by messenger service to any of the following persons: the qualified recipient, the qualified recipient's attending physician or any person expressly designated by the qualified recipient as having authority to accept delivery on behalf of the qualified recipient.

### Aid-in Dying Drugs

Aid-in-dying prescription drugs are reimbursable when requirements of the End of Life Option Act are met. Because the Act specifies that aid-in-dying drugs must be ingested, only drugs for oral or sublingual use are reimbursable. Based upon standard protocols and metrics used by other states that offer aid-in-dying services (for example, Oregon, Washington, Vermont and New Mexico), certain drugs are most often prescribed for this purpose. These drugs include, but are not limited to, metoclopramide and/or ondansetron for antiemetic purposes and secobarbital or pentobarbital. Because the Act does not specify which drugs are permitted for use as aid-in-dying drugs, the drugs that attending physicians choose to prescribe for this purpose are reimbursable.

### Documentation Requirements

In accordance with H&S Code, Section 443.8, all of the following must be documented by the attending physician in the recipient's medical record:

- All oral and written requests for an aid-in-dying drug. The *Request For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner* form (H&S Code, Section 443.11[a]) must be included in the medical record.
- The attending physician's diagnosis, prognosis in terms of life expectancy and the determination that the recipient has the capacity to make medical decisions, is acting voluntarily and has made an informed decision, or the determination that the recipient does not meet requirements to receive an aid-in-dying drug. The *Attending Physician Checklist & Compliance Form* (H&S Code, Section 443.22[b]) must be contained in the recipient's medical record.
- The consulting physician's diagnosis, prognosis in terms of life expectancy and verification that the recipient has the capacity to make medical decisions, is acting voluntarily and has made an informed decision, or the determination that the recipient does not meet requirements to receive an aid-in-dying drug. The *Consulting Physician Compliance Form* (H&S Code, Section 443.22[b]) must be contained in the recipient's medical record.
- A report of the outcome and determinations made during a mental health specialist's assessment, if performed.
- The attending physician's offer to the recipient to withdraw or rescind his or her request at the time of the recipient's second oral request.
- A note by the attending physician indicating that all requirements under the Act have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying drugs prescribed.
- The *Final Attestation for an Aid-In-Dying Drug to End My Life in a Humane and Dignified Manner* form (H&S Code, Section 443.11[c]), when received, must be included in the recipient's medical record.

## Consulting Physician Responsibilities

The consulting licensed physician must fulfill the following requirements:

- Examine the recipient and his or her relevant medical records.
- Confirm in writing whether the recipient has the terminal illness diagnosed by the attending physician and determine whether the recipient has a life expectancy of six months or less.
- Determine that the recipient has the capacity to make medical decisions, is acting voluntarily and has made an informed decision.
- If there are indications of a mental disorder, refer the recipient for a mental health specialist assessment.
- Meet the Act's record-documentation requirements.
- Submit the *Consulting Physician Compliance Form* to the attending physician (available for download in a printable PDF on the "End of Life Option Act" Web page of the California Department of Public Health website: <http://www.cdph.ca.gov>).

## Mental Health Specialist Responsibilities

If a mental health consultation is deemed necessary by either the attending or consulting physician, the consulting psychiatrist or licensed psychologist must fulfill all the following requirements:

- Examine the recipient and his or her relevant medical records.
- Determine whether the recipient has the mental capacity to make medical decisions, act voluntarily and make an informed decision.
- Determine whether the recipient is suffering from impaired judgment due to a mental disorder.
- Meet the Act's record-documentation requirements.

## Authorization

A *Treatment Authorization Request* (TAR) is not required for any medical, mental health or pharmacy services pertaining to the Act.

## Billing for End of Life Option Act Services

Because Medicare does not provide coverage for aid-in-dying drugs or for medical services related to prescribing of these drugs, claims for End of Life Option Act services provided to Medi-Cal recipients who have Medicare coverage do not require a denial from Medicare prior to processing.

For additional help, refer to the *End of Life Option Act Services Billing Examples: CMS-1500* and *End of Life Option Act Services Billing Examples: UB-04* sections of the appropriate Part 2 manual.

## Billing Code Chart

The following chart lists procedure codes associated with End of Life Option services and the claim forms on which they are allowable:

«Table of Allowable Procedure Codes for End-of-Life Option Services»

| Code/Claim Type                                        | Description                                                                                                                      | Billed By                                                                                  |
|--------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| HCPCS code J7999<br><i>CMS-1500</i>                    | Compounded drug, not otherwise classified (NOS)                                                                                  | Attending physicians, pharmacists                                                          |
| HCPCS code J8499<br><i>CMS-1500</i>                    | Prescription drug, oral, non-chemotherapeutic, not otherwise specified (NOS)                                                     | Attending physicians, pharmacists                                                          |
| HCPCS code S0257<br><i>CMS-1500, UB-04</i>             | Counseling and discussion regarding advance directives or end of life care planning and decisions, with patient                  | Attending/consulting physicians, outpatient clinics, psychiatrists, licensed psychologists |
| Revenue code 0521,<br>HCPCS code S0257<br><i>UB-04</i> | Counseling and discussion regarding advance directives or end of life care planning and decisions, with patient and/or surrogate | FQHCs/RHCs                                                                                 |
| Revenue code 0520,<br>HCPCS code S0257<br><i>UB-04</i> | Counseling and discussion regarding advance directives or end of life care planning and decisions, with patient and/or surrogate | IHS-MOAs                                                                                   |

## Chart: Additional Required Codes

The following chart lists required CPT® codes entered in the *Additional Claim Information* field (Box 19) on the *CMS-1500* claim or *Remarks* field (Box 80) on the *UB-04* claim. These codes facilitate appropriate claim pricing.

«Table of Required CPT Codes for End-of-Life Option Services»

| Code Claim Type                                     | Description                                                                                                                                                                                                                | On Claims Submitted By                                                          |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| CPT code 90791<br><i>CMS-1500, UB-04</i>            | Psychiatric diagnostic evaluation                                                                                                                                                                                          | Psychiatrists, licensed psychologists                                           |
| CPT code 99241 thru 99244<br><i>CMS-1500, UB-04</i> | Office consultation for a new or established recipient                                                                                                                                                                     | Consulting physicians, outpatient clinics (do not use for RHC, FQHC or IHS/MOA) |
| CPT code 99497<br><i>CMS-1500, UB-04</i>            | Advance care planning including the explanation and discussion of advance directives such as standard forms, by the physician or other qualified health care professional; first 30 minutes, face-to-face with the patient | Attending physicians, outpatient clinics (do not use for RHC, FQHC or IHS/MOA)  |
| CPT code 99498<br><i>CMS-1500, UB-04</i>            | each additional 30 minutes                                                                                                                                                                                                 | Attending physicians, outpatient clinics (do not use for RHC, FQHC or IHS/MOA)  |

## Attending Physician Billing

When billed on the *CMS-1500* claim form, attending physician office visits are billed only as follows:

- Enter HCPCS code S0257 (counseling and discussion regarding advance directives or end of life care planning and decisions, with patient) in the *Procedures, Services or Supplies* field (Box 24D).
- Include ICD-10-CM diagnosis code Z76.89 (persons encountering health services in other specified circumstances) as the primary diagnosis code in the *Diagnosis or Nature of Illness or Injury* field (Box 21A).

- Include the ICD-10-CM diagnosis code for the terminal illness as the secondary diagnosis in Box 21B.
- Note CPT codes 99497 (advance care planning including the explanation and discussion of advance directives such as standard forms, by the physician or other qualified health care professional; first 30 minutes, face to face with the patient) and 99498 (...each additional 30 minutes), as appropriate, in the *Additional Claim Information* field (Box 19).
- Add “21A” in the *Diagnosis Pointer* field (Box 24E) to reference the diagnosis code in field 21A.

Billing instructions for attending physicians who dispense aid-in-dying drugs can be found in the *End of Life Option Act Services Billing Examples: CMS-1500* and *End of Life Option Act Services Billing Examples: UB-04* sections of the appropriate Part 2 manual.

## Consulting Physician Billing

When billed on the *CMS-1500* claim form, consulting physician services are billed only as follows:

- Recipients seeking end of life services must see a second consulting physician to confirm the recipient’s diagnosis, life expectancy and ability to make medical decisions.
- Consulting physician services are billed the same as attending physicians except an appropriate code from CPT range 99241 thru 99244 (office consultation for a new or established recipient) is required in the *Additional Claim Information* field (Box 19), instead of code 99497.

## Mental Health Professional Billing

Psychiatrist or licensed psychologist services are billed on the *CMS-1500* claim form the same as those of attending physicians with the following exceptions:

- Include ICD-10-CM diagnosis code Z01.89 (encounter for other specified special examination) as the primary diagnosis code.
- Use a secondary diagnosis code to indicate the mental health diagnosis (if one is diagnosed).
- Note CPT code 90791 (psychiatric diagnostic evaluation) in the *Additional Claim Information* field (Box 19).

## Pharmacy Billing

Pharmacies must bill for end of life services on the *CMS-1500* claim form only. Claims submitted via the POS system, *Pharmacy Claim Form (30-1)* or *Compound Drug Pharmacy Claim Form (30-4)* will be denied. Only United States Food and Drug Administration (FDA) approved drugs may be reimbursed by Medi-Cal. Unapproved drugs, including foreign-made versions of FDA approved drugs that have not been manufactured pursuant to FDA approval, will not be reimbursed.

The *CMS-1500* claim form should be completed as follows.

Non-compounded pharmacy claims:

- Use HCPCS code J8499 (prescription drug, oral, non-chemotherapeutic, not otherwise classified) in the *Procedures, Services or Supplies* field (Box 24D).
- Include ICD-10-CM diagnosis code Z76.89 as the primary diagnosis code in the *Diagnosis or Nature of Illness or Injury* field (Box 21A).
- Enter the product ID qualifier N4 and the National Drug Code (NDC) in the shaded area of Box 24A. Refer to the *Physician-Administered Drugs – NDC: CMS-1500 Billing Instructions* for directions on correctly formatting the NDC number.
- Add “21A” in the *Diagnosis Pointer* field (Box 24E) to reference the diagnosis code in field 21A.

Compounded pharmacy claims:

- Use HCPCS code J7999 (compounded drug, not otherwise classified) in the *Procedures, Services or Supplies* field (Box 24D).
- Include ICD-10-CM diagnosis code Z76.89 as the primary diagnosis code in the *Diagnosis or Nature of Illness or Injury* field (Box 21A).
- State the main ingredient of the compounded drug identified by the product ID qualifier N4 and the National Drug Code (NDC) in the shaded area of Box 24A. All compounded drug ingredients must be listed on an attachment to the claim (in addition to invoice or catalog page[s]) showing the NDC/UPC/HRI#, unit, quantity and charge.
- Add “21A” in the *Diagnosis Pointer* field (Box 24E) to reference the diagnosis code in field 21A.

## FQHC, RHC and IHS-MOA Billing

Federally Qualified Health Centers (FQHCs), Rural Health Clinics (RHC) and Indian Health Services, Memorandum of Agreement (IHS-MOA) 638 clinics must bill end of life services on the *UB-04* claim only as follows.

For attending and consulting physicians billing for office visits:

- FQHC/RHC: Enter revenue code 0521 in the *Revenue Code* field (Box 42) and HCPCS code S0257 in the *HCPCS/Rate* field (Box 44).
- IHS-MOA: Enter revenue code 0520 in the *Revenue Code* field (Box 42) and HCPCS code S0257 in the *HCPCS/Rate* field (Box 44).
- Enter the ICD-10-CM diagnosis code Z76.89 as the primary diagnosis in Box 67.
- Enter a secondary diagnosis code in Box 67A indicating the terminal illness.
- For FQHCs, RHCs and IHS-MOAs, no CPT code is required in the *Remarks* field (Box 80).

For psychiatrist or licensed psychologist services:

- FQHC/RHC: Enter revenue code 0521 in the *Revenue Code* field (Box 42) and HCPCS code S0257 in the *HCPCS/Rate* field (Box 44).
- IHS-MOA: Enter revenue code 0520 in the *Revenue Code* field (Box 42) and HCPCS code S0257 in the *HCPCS/Rate* field (Box 44).
- Enter ICD-10-CM diagnosis code Z01.89 as the primary diagnosis in Box 67.
- Enter a secondary diagnosis code in Box 67A indicating the mental health diagnosis (if one is diagnosed).
- For FQHCs, RHCs and IHS-MOAs, no CPT code is required in the *Remarks* field (Box 80).

## Outpatient Billing

Outpatient providers other than FQHCs, RHCs and IHS-MOAs bill end of life services on the *UB-04* claim form only as follows.

Attending and consulting physician office visits:

- Use HCPCS code S0257 in *HCPCS/Rate* field (Box 44).
- Enter ICD-10-CM diagnosis code Z76.89 as the primary diagnosis in Box 67.
- Use the ICD-10-CM diagnosis code for the terminal illness as the secondary diagnosis code in Box 67A.
- Note CPT code 99497 and 99498, as appropriate, in the *Remarks* field (Box 80) for attending physicians only or an appropriate code from CPT range 99241 thru 99244 for consulting physicians only.

Psychiatrist or licensed psychologist services:

- Use HCPCS code S0257 in *HCPCS/Rate* field (Box 44).
- Enter ICD-10-CM diagnosis code Z01.89 as the primary diagnosis in Box 67.
- Use a secondary ICD-10-CM diagnosis code in Box 67A indicating the mental health diagnosis (if one is diagnosed).
- Note CPT code 90791 in the *Remarks* field (Box 80).

## Other Health Coverage

Providers should follow existing Medi-Cal billing practices when billing for services rendered to recipients with Other Health Coverage (OHC). For example, if a recipient has a commercial insurance plan that will not cover aid-in-dying services and drugs under the Act, providers should bill the commercial insurance plan, receive a denial and then bill Medi-Cal with the OHC denial.

## Attending Physician Forms and Reporting Requirements

The Act's reporting requirements are as follows:

- Within 30 calendar days of writing a prescription for aid-in-dying drugs, the attending physician must submit copies of the following forms to the California Department of Public Health (CDPH):
  - *Request For An Aid-In-Dying Drug To End My Life In A Humane And Dignified Manner* form (H&S Code, Section 443.11[a])

- *Attending Physician Checklist & Compliance Form* (H&S Code, Section 443.22[b])
- *Consulting Physician Compliance Form* (H&S Code, Section 443.22[b])
- These documents must be submitted via mail or secure fax to:
  - Attn: End of Life Option Act
  - California Department of Public Health
  - Public Health Policy and Research Branch
  - MS 5205
  - P.O. Box 997377
  - Sacramento, CA 95899-7377
  - Fax: (916) 440-5209
- The three documents listed above should also be contained in the recipient’s medical record.
- Within 30 calendar days following the recipient’s death from ingesting the aid-in-dying drugs, or any other cause, the attending physician must submit the *Attending Physician Follow-Up Form* (H&S Code, Section 443.22[b]) to CDPH.

#### Forms Available from California Department of Public Health

The following provider forms required under the Act (H&S Code, Section 443.22[b]) are available in a downloadable PDF on the “End of Life Option Act” Web page of the California Department of Public Health website <http://www.cdph.ca.gov>:

- *Attending Physician Checklist & Compliance Form*
- *Consulting Physician Compliance Form*
- *Attending Physician Follow-Up Form*

#### Forms Available from Medical Board of California

The following recipient forms required under the Act (H&S Code, Section 443.11) are available in a downloadable PDF on the “End of Life” Web page of the Medical Board of California website <http://www.mbc.ca.gov>:

- *Request for an Aid-In-Dying Drug to End My Life in a Humane and Dignified Manner*
- *Final Attestation for an Aid-In-Dying Drug to End My Life in a Humane and Dignified Manner*

**<<Legend>>**

<<Symbols used in the document above are explained in the following table.>>

| <b>Symbol</b> | <b>Description</b>                                                                                    |
|---------------|-------------------------------------------------------------------------------------------------------|
| <<            | This is a change mark symbol. It is used to indicate where on the page the most recent change begins. |
| >>            | This is a change mark symbol. It is used to indicate where on the page the most recent change ends.   |