

## INITIATIVE MEASURE TO BE DIRECTLY SUBMITTED TO THE VOTERS

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

### INITIATIVE TO EXPAND ON STATE LAW TO ALLOW BERKELEY RESIDENTS SUFFERING FROM SERIOUS ILLNESS OR DISEASE TO SELF-ADMINISTER AID-IN-DYING DRUGS

State law allows certain individuals with a terminal illness, defined as a medically-confirmed incurable and irreversible disease that will, within reasonable medical judgment, result in death within six months, to request a prescription to receive ingestible drugs that will assist in causing that individual's death.

This initiative, if adopted, would add a chapter to the Berkeley Municipal Code that would expand upon state law in two primary ways. First, the initiative would expand the eligibility criteria for Berkeley residents to include all individuals that have a serious and incurable illness, regardless of the length of time the individual has left to live, if the illness causes physical or psychological suffering that is intolerable to the individual and has placed the individual in a state of irreversible decline, so long as it is reasonably foreseeable that the illness will be the individual's natural cause of death. Second, the initiative would expand upon state law by allowing eligible Berkeley residents to self-administer aid-in-dying drugs through an intravenous pathway in addition to self-administration through ingestion.

The initiative would also make other changes to the state law standard for purposes of administering the Berkeley-specific program. These changes would include (1) making 25 years or older the age of eligibility for Berkeley residents to request aid-in-dying drugs for serious and incurable illnesses that are not terminal illnesses; (2) clarifying that the "health care providers" who will be immune from legal liability and able to make an initial eligibility determination under Berkeley law will include nurse practitioners, physician assistants, registered nurses, and death doulas; (3) delegating responsibility over certain forms that will be used in administering the Berkeley program to the City's Public Health Division; and (4) incorporating, with certain City-specific changes, state law provisions regarding provider rights, responsibilities, and other requirements that relate to the administration of aid-in-dying drugs.

#### MEASURE TEXT

Chapter 12.05

#### INDIVIDUAL ACCESS TO AND HEALTHCARE PARTICIPANTS IN MEDICAL AID IN DYING

Sections:

- 12.05.010 DEFINITIONS
- 12.05.020 INDIVIDUAL QUALIFICATIONS
- 12.05.030 INDIVIDUAL RIGHTS AND RESPONSIBILITIES
- 12.05.040 HEALTHCARE PROVIDER RESPONSIBILITIES TO INDIVIDUAL
- 12.05.050 HEALTHCARE PROVIDER RESPONSIBILITIES TO CITY OF BERKELEY AND STATE OF CALIFORNIA
- 12.05.060 STRUCTURE FOR MEDICAL AID IN DYING REQUEST AND APPROVAL
- 12.05.070 LEGAL PROTECTIONS AND RIGHTS OF INDIVIDUALS AND HEALTHCARE PARTICIPANTS
- 12.05.080 HEALTHCARE PROVIDER RIGHTS
- 12.05.090 HEALTHCARE PROVIDER RESPONSIBILITIES
- 12.05.100 HEALTHCARE PROVIDER STIPULATIONS
- 12.05.110 CITY OF BERKELEY RESPONSIBILITIES TO THE STATE OF CALIFORNIA
- 12.05.120 STATE RESPONSIBILITIES RE-DELEGATED TO THE CITY OF BERKELEY
- 12.05.130 CITY OF BERKELEY'S PUBLIC HEALTH DIVISION RESPONSIBILITIES
- 12.05.140 MUTUAL EXCLUSIVITY OF SECTIONS
- 12.05.150 COST NULLIFICATION STATEMENT

THE PEOPLE OF THE CITY OF BERKELEY DO ENACT AS FOLLOWS:

#### **12.05.010 Definitions**

As used in this part, the following definitions shall apply which are derived from Section 443.1 of California's Health and Safety Code (HSC):

- A. "Adult" means an individual 25 years of age or older.
- B. "Aid-in-dying drug" means a drug determined and prescribed by a physician for a qualified individual, which the qualified individual may choose to self-administer to bring about their death due to a grievous and irremediable medical condition.
- C. "Attending physician" means the physician who has primary responsibility for the health care of an individual and treatment of the individual's grievous and irremediable medical condition.
- D. "Attending physician compliance form" means a form, as described in Section 443.22 of California's Health and Safety Code (HSC), identifying each and every requirement that must be fulfilled by an attending physician to be in good faith compliance with this part should the attending physician choose to participate.
- E. "Capacity to make medical decisions" means that, in the opinion of an individual's attending physician, consulting physician, psychiatrist, neurologist, or psychologist, pursuant to Section 4609 of the State of California's Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make and communicate an informed decision to health care providers.

F. "Consulting physician" means a physician who is independent from the attending physician and who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's grievous and irremediable medical condition.

G. "Department" means the State Department of Public Health.

H. "Grievous and irremediable medical condition" means

1. A medical condition that meets all the following criteria:

a. The condition is a serious and incurable illness or disease.

b. The condition has placed the individual in a state of irreversible decline in capability and the individual's suffering is palpable without prospect of improvement.

c. The condition is causing the individual to endure suffering labeled as physical or psychological due to the illness, disease, or state of decline that is intolerable to the individual and cannot be relieved in a manner the individual deems acceptable, and there is no proven treatment for the individual's situation that the individual has not attempted or is willing to attempt due to the nature or side effects of the treatment.

d. After taking into account all of the individual's medical circumstances, it is reasonably foreseeable that the condition will become the individual's natural cause of death. A specific prognosis as to the length of time the person has left to live shall not be required to meet this criteria.

2. For purposes of this part, and notwithstanding (1), a diagnosis of dementia, if the individual meets the requirements of Section 443.2 of California's Health and Safety Code (HSC), is considered a grievous and irremediable medical condition.

3. For purposes of this part, a sole diagnosis of a mental disorder can qualify as a grievous and irremediable medical condition.

I. "Health care provider" or "provider of health care" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code of the State of California— including nurse practitioners, physician assistants, registered nurses, death doulas – any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act, and any person certified pursuant to Division 2.5 (commencing with Section 1797) of this code.

J. "Health care entity" means any clinic, health dispensary, or health facility licensed pursuant to the State of California's Division 2 (commencing with Section 1200), including a general hospital, medical clinic, nursing home or hospice facility. A health care entity does not include individuals described in subdivision (I).

K. "Informed decision" means a decision by an individual with a grievous and irremediable medical condition to request and obtain a prescription for a drug that the individual may self-administer to end the individual's life, that is based on an understanding and acknowledgment of the relevant facts, and that is made after being fully informed by the attending physician of all of the following:

1. The individual's medical diagnosis and prognosis.

2. The potential risks associated with utilizing the drug to be prescribed.

3. The probable result of utilizing the drug to be prescribed.

4. The possibility that the individual may choose not to obtain the drug or may obtain the drug but may decide not to utilize it.

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

L. "Medically confirmed" means the medical diagnosis and prognosis of the attending physician has been confirmed by a consulting physician who has examined the individual and the individual's relevant medical records.

M. "Mental health specialist assessment" means one or more consultations between an individual and a mental health specialist for the purpose of determining that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

N. "Mental health specialist" means a psychiatrist, neurologist, or a licensed psychologist.

O. "Physician" means a doctor of medicine or osteopathy currently licensed to practice medicine in this state.

P. "Public place" means any street, alley, park, public building, any place of business or assembly open to or frequented by the public, and any other place that is open to the public view, or to which the public has access. "Public place" does not include a health care entity.

Q. "Qualified individual" means an adult who has the capacity to make medical decisions, is a resident of the City of Berkeley, and has satisfied the requirements of this part in order to obtain a prescription for a drug to end their life.

R. "Self-administer" means a qualified individual's affirmative, conscious, and physical act of administering the aid-in-dying drug to bring about their own death through ingestion, or through an intravenous pathway after a health care provider places an intravenous catheter if one was not already placed, to bring about the qualified individual's own death.

#### **12.05.020 INDIVIDUAL QUALIFICATIONS AND RESPONSIBILITIES**

Section 443.2 of California's Health and Safety Code (HSC) is extended to:

A. An individual who is an adult with the capacity to make medical decisions and with a grievous and irremediable medical condition may make a request to receive a prescription for an aid-in-dying drug if all of the following conditions are satisfied:

1. The individual's attending physician has diagnosed the individual with a grievous and irremediable medical condition.

2. The individual has voluntarily expressed the wish to receive a prescription for an aid-in-dying drug.

3. The individual is a resident of Berkeley and is able to establish residency through any of the following:

a. Possession of a California driver's license or other identification issued by the State of California.

b. Registration to vote in Alameda County.

c. Evidence that the person owns or leases property in Berkeley.

d. Filing of a Federal tax return for the most recent tax year.

4. The individual documents their request pursuant to the requirements set forth in Section 443.3 of California's Health and Safety Code (HSC).

5. The individual has the physical and mental ability to self-administer the aid-in-dying drug.

B. A person shall not be considered a qualified individual under the provisions of this part solely because of age or disability.

C. A request for a prescription for an aid-in-dying drug under this part shall be made solely and directly by the individual diagnosed with the grievous and irremediable medical condition and shall not be made on behalf of the patient, including, but not limited to, through a power of attorney, an advance health care directive, a conservator, health care agent, surrogate, or any other legally recognized health care decision maker.

#### **12.05.030 INDIVIDUAL RIGHTS**

The following specifications are derived from Section 443.4 of California's Health and Safety Code (HSC):

A. An individual may at any time withdraw or rescind their request for an aid-in-dying drug, or decide not to utilize an aid-in-dying drug, without regard to the individual's mental state.

B. A prescription for an aid-in-dying drug provided under this part may not be written without the attending physician directly, and not through a designee, offering the individual an opportunity to withdraw or rescind the request.

C. If the individual decides to transfer care to another physician, upon request of the individual the physician shall transfer all relevant medical records, including written documentation that contain the dates of the individual's oral and written requests seeking to obtain a prescription for an aid-in-dying drug.

#### **12.05.040 HEALTHCARE PROVIDER RESPONSIBILITIES TO INDIVIDUAL**

The following requirements are derived from Section 443.5 of California's Health and Safety Code (HSC):

A. Before prescribing an aid-in-dying drug, the attending physician shall do all of the following:

1. Make the initial determination of all of the following:

a. Decision-making capacity

i. Whether the requesting adult has the capacity to make medical decisions.

ii. If there are indications of a mental disorder, the physician shall refer the individual for a mental health specialist assessment.

iii. If a mental health specialist assessment referral is made, aid-in-dying drugs shall not be prescribed until the mental health specialist determines that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

b. Whether the requesting adult has a grievous and irremediable medical condition.

c. Whether the requesting adult has voluntarily made the request for an aid-in-dying drug pursuant to Sections 443.2 and 443.3 of California's Health and Safety Code (HSC).

d. Whether the requesting adult is a qualified individual pursuant to Section 443.1 of California's Health and Safety Code (HSC).

2. Confirm that the individual is making an informed decision by discussing with them all of the following:

a. Their medical diagnosis and prognosis.

b. The potential risks associated with utilizing the requested aid-in-dying drug.

c. The probable result of utilizing the aid-in-dying drug.

d. The possibility that they may choose to obtain the aid-in-dying drug but not take it.

e. The feasible alternatives or additional treatment options, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

3. Refer the individual to a consulting physician for medical confirmation of the diagnosis and prognosis, and for a determination that the individual has the capacity to make medical decisions and has complied with the provisions of this part.

4. Confirm that the qualified individual's request does not arise from coercion or undue influence by another person by discussing with the qualified individual, outside of the presence of any other persons, except for an interpreter as required pursuant to this part, whether or not the qualified individual is feeling coerced or unduly influenced by another person.

5. Counsel the qualified individual about the importance of all of the following:

a. Having another person present including a Death Doula when they utilize the aid-in-dying drug prescribed pursuant to this part.

b. Not utilizing the aid-in-dying drug in a public place.

c. Notifying the next of kin of their request for an aid-in-dying drug. A qualified individual who declines or is unable to notify next of kin shall not have their request denied for that reason.

d. Participating in a hospice program.

e. Maintaining the aid-in-dying drug in a safe and secure location until the time that the qualified individual will utilize it.

6. Inform the individual that they may withdraw or rescind the request for an aid-in-dying drug at any time and in any manner.

7. Offer the individual an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing the aid-in-dying drug.

8. Verify, immediately before writing the prescription for an aid-in-dying drug, that the qualified individual is making an informed decision.

9. Confirm that all requirements are met and all appropriate steps are carried out in accordance with this part before writing a prescription for an aid-in-dying drug.

10. Fulfill the record documentation required under Sections 443.8 and 443.19 of California's Health and Safety Code (HSC).

11. Complete the attending physician compliance form, as described in Section 443.22 of California's Health and Safety Code (HSC), include it and the consulting physician compliance form in the individual's medical record, and submit both forms to the department.

B. If the conditions set forth in subdivision (A) are satisfied, the attending physician may deliver the aid-in-dying drug in any of the following ways:

1. Dispensing the aid-in-dying drug directly, including ancillary medication intended to minimize the qualified individual's discomfort, if the attending physician meets all of the following criteria:

a. Is authorized to dispense medicine under California law.

b. Has a current United States Drug Enforcement Administration (USDEA) certificate.

c. Complies with any applicable administrative rule or regulation.

2. With the qualified individual's written consent, contacting a pharmacist, informing the pharmacist of the prescriptions, and delivering the written prescriptions personally, by mail, or electronically to the pharmacist, who may dispense the drug to the qualified individual, the attending physician, or a person expressly designated by the qualified individual and with the designation delivered to the pharmacist in writing or verbally.

C. Delivery of the dispensed drug to the qualified individual, the attending physician, or a person expressly designated by the qualified individual may be made by personal delivery, or, with a signature required on delivery, by United Parcel Service, United States Postal Service, FedEx, or by messenger service.

#### **12.05.050 HEALTHCARE PROVIDER RESPONSIBILITIES TO THE CITY OF BERKELEY AND THE STATE OF CALIFORNIA**

The following requirements are derived from Section 443.9 of California's Health and Safety Code (HSC):

A. Within 30 calendar days of writing a prescription for an aid-in-dying drug, the attending physician shall submit to the City of Berkeley Public Health Division and department a copy of the qualifying patient's written request, the attending physician compliance form, and the consulting physician compliance form.

B. Within 30 calendar days following the qualified individual's death from utilizing the aid-in-dying drug, or any other cause, the attending physician shall submit the attending physician followup form to the City of Berkeley Public Health Division and department.

#### **12.05.060 STRUCTURE FOR MEDICAL AID IN DYING REQUEST AND APPROVAL**

The following guidelines are based on Section 443.11 of California's Health and Safety Code (HSC):

A. A request for an aid-in-dying drug as authorized by this part shall be in the following form:

REQUEST FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER I, ....., am an adult of sound mind and a resident of the City of Berkeley.

I am suffering from ....., which my attending physician has determined to be a grievous and irremediable medical condition and which has been medically confirmed.

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

I request that my attending physician prescribe an aid-in-dying drug that will end my life in a humane and dignified manner if I choose to utilize it, and I authorize my attending physician to contact any pharmacist about my request.

INITIAL ONE:

..... I have informed one or more members of my family of my decision and taken their opinions into consideration.

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

..... I have no family to inform of my decision.

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

I understand the full import of this request and I expect to die if I utilize the aid-in-dying drug to be prescribed. My attending physician has counseled me about the possibility that my death may not occur immediately upon utilization of the drug.

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

Signed:.....

Dated:.....

DECLARATION OF WITNESSES

We declare that the person signing this request:

1. is personally known to us or has provided proof of identity;
2. voluntarily signed this request in our presence;
3. is an individual whom we believe to be of sound mind and not under duress, fraud, or undue influence; and
4. is not an individual for whom either of us is the attending physician, consulting physician, or mental health specialist.

.....Witness 1/Date

.....Witness 2/Date

NOTE: Only one of the two witnesses may be a relative (by blood, marriage, registered domestic partnership, or adoption) of the person signing this request or be entitled to a portion of the person's estate upon death. Only one of the two witnesses may own, operate, or be employed at a health care entity where the person is a patient or resident.

B. The language of the request shall be

1. written in the same translated language as any conversations, consultations, or interpreted conversations or consultations between a patient and their attending or consulting physicians.
2. notwithstanding paragraph (1), the written request may be prepared in English even when the conversations or consultations or interpreted conversations or consultations were conducted in a language other than English if the English language form includes an attached interpreter's declaration that is signed under penalty of perjury. The interpreter's declaration shall state words to the effect that:

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

On (insert date) at approximately (insert time), I read the "Request for an Aid-In-Dying Drug to End My Life" to (insert name of individual/patient) in (insert target language).

Mr./Ms./Mx. (insert name of patient/qualified individual) affirmed to me that they understood the content of this form and affirmed their desire to sign this form under their own power and volition and that the request to sign the form followed consultations with an attending and consulting physician.

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

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

X\_\_\_\_\_ Interpreter signature

X\_\_\_\_\_ Interpreter printed name

X \_\_\_\_\_ Interpreter address

3. An interpreter whose services are provided pursuant to paragraph (2) shall not be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption nor be entitled to a portion of the person's estate upon death. An interpreter whose services are provided pursuant to paragraph (2) shall meet the standards promulgated by the California Healthcare Interpreting Association or the National Council on Interpreting in Health Care or other standards deemed acceptable by the City of Berkeley Public Health Division and department for health care providers in California.

#### **12.05.070 LEGAL PROTECTIONS AND RIGHTS OF INDIVIDUALS AND HEALTHCARE PARTICIPANTS**

The following principles are derived from Section 443.14 of City of Berkeley Public Health Division:

A. Notwithstanding any other law, a person shall not be subject to civil or criminal liability solely because the person was present when the qualified individual self-administers the prescribed aid-in-dying drug. A person who is present may, without civil or criminal liability, assist the qualified individual by preparing the aid-in-dying drug so long as the person does not assist the qualified person in utilizing the aid-in-dying drug. For purposes of this section, "assisting the qualified individual by preparing the aid-in-dying drug" includes a health care provider placing an intravenous catheter, so long as the health care provider does not assist the qualified individual in introducing the aid-in-dying drug into the qualified individual's vein.

B. A health care provider, health care entity, or professional organization or association shall not subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating in good faith compliance with this part or for refusing to participate in accordance with subdivision (E).

C. Notwithstanding any other law, a health care provider or a health care entity shall not be subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for participating in this part. This subdivision does not limit the application of, or provide immunity from, Section 443.15, 443.16, or 443.17 of California's Health and Safety Code (HSC).

D. Process for patients wanting to access medical aid in dying

1. A request by a qualified individual to an attending physician to provide an aid-in-dying drug in good faith compliance with the provisions of this part shall not provide the sole basis for the appointment of a guardian or conservator.

2. Actions taken in compliance with the provisions of this part shall not constitute or provide the basis for any claim of neglect or elder abuse for any purpose of law.

E. Protocol for qualified healthcare providers to facilitate medical aid in dying requests:

1. Participation under this part shall be voluntary. Notwithstanding Sections 442 to 442.7 of California's Health and Safety Code (HSC), inclusive, a person or entity that elects, for reasons of conscience, morality, or ethics, not to participate is not required to participate under this part. This subdivision does not limit the application of, or excuse noncompliance with, paragraphs (2), (4), and (5) of this subdivision or subdivision (B), (I), or (J) of Section 443.15 of California's Health and Safety Code (HSC), as applicable.

2. A health care provider who objects for reasons of conscience, morality, or ethics to participate under this part shall not be required to participate. If a health care provider is unable or unwilling to participate under this part, as defined in subdivision (F) of Section 443.15 of California's Health and Safety Code (HSC), the provider shall, at a minimum, inform the individual that they do not participate in the End of Life Option Act, document the individual's date of request and provider's notice to the individual of their objection in the medical record, and transfer the individual's relevant medical record upon request.

3. A health care provider or health care entity is not subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for refusing to participate under this part, as defined in paragraph (2) of subdivision (F) of Section 443.15 of California's Health and Safety Code (HSC).

4. If a health care provider is unable or unwilling to carry out a qualified individual's request under this part and the qualified individual transfers care to a new health care provider or health care entity, the individual's relevant medical records shall be provided to the individual and, upon the individual's request, timely transferred with documentation of the date of the individual's request for a prescription for aid-in-dying drug in the medical record, pursuant to law.

5. A health care provider or a health care entity shall not engage in false, misleading, or deceptive practices relating to a willingness to qualify an individual or provide a prescription to a qualified individual under this part.

#### **12.05.080 HEALTHCARE PROVIDER RIGHTS**

The following specifications are derived from Section 443.15 of California's Health and Safety Code (HSC):

A. Subject to subdivision (B), notwithstanding any other law, a health care entity may prohibit its employees, independent contractors, or other persons or entities, including health care providers, from participating under this part while on premises owned or under the management or direct control of that health care entity or while acting within the course and scope of any employment by, or contract with, the entity.

B. A health care entity shall first give notice upon employment or other affiliation and thereafter annual notice of the policy concerning this part to the individual or entity. An entity that fails to provide notice to an individual or entity in compliance with this subdivision shall not be entitled to enforce such a policy against that individual or entity. For purposes of this subdivision, posting on the entity's public internet website the entity's current policy governing medical aid in dying shall satisfy the annual notice requirement.

C. Subject to compliance with subdivision (b), the health care entity may take action, including, but not limited to, the following, as applicable, against any individual or entity that violates this policy:

1. Loss of privileges, loss of membership, or other action authorized by the bylaws or rules and regulations of the medical staff.

2. Suspension, loss of employment, or other action authorized by the policies and practices of the health care entity.

3. Termination of any lease or other contract between the health care entity and the individual or entity that violates the policy.

4. Imposition of any other nonmonetary remedy provided for in any lease or contract between the health care entity and the individual or entity in violation of the policy.

D. This section does not prevent, or allow a health care entity to prohibit, any health care provider, employee, independent contractor, or other person or entity from any of the following:

1. Participating, or entering into an agreement to participate, under this part, while on premises that are not owned or under the management or direct control of the health care entity or while acting outside the course and scope of the participant's duties as an employee of, or an independent contractor for, the health care entity.

2. Participating, or entering into an agreement to participate, under this part as an attending physician or consulting physician while on premises that are not owned or under the management or direct control of the health care entity.

E. In taking actions pursuant to subdivision (C), a health care entity shall comply with all procedures required by law, its own policies or procedures, and any contract with the individual or entity in violation of the policy, as applicable.

F. For purposes of this part:

1. "Notice" means a separate statement in writing advising of the health care entity policy with respect to participating under this part.
2. "Participating, or entering into an agreement to participate, under this part" means doing or entering into an agreement to do any one or more of the following:
  - a. Performing the duties of an attending physician as specified in Section 443.5 of California's Health and Safety Code (HSC).
  - b. Performing the duties of a consulting physician as specified in Section 443.6 of California's Health and Safety Code (HSC).
  - c. Performing the duties of a mental health specialist, in the circumstance that a referral to one is made.
  - d. Delivering the prescription for, dispensing, or delivering the dispensed aid-in-dying drug pursuant to paragraph (2) of subdivision (B) of, and subdivision (C) of, Section 443.5 of California's Health and Safety Code (HSC).
  - e. Being present when the qualified individual utilizes the aid-in-dying drug prescribed pursuant to this part.
3. "Participating, or entering into an agreement to participate, under this part" does not include doing, or entering into an agreement to do, any of the following:
  - a. Diagnosing whether a patient has a grievous and irremediable medical condition, informing the patient of the medical prognosis, or determining whether a patient has the capacity to make decisions.
  - b. Providing information to a patient about this part.
  - c. Providing a patient, upon the patient's request, with a referral to another health care provider for the purposes of participating under this part.

G. Any action taken by a health care entity pursuant to this section shall not be reportable under the State of California's Sections 800 to 809.9, inclusive, of the Business and Professions Code. The fact that a health care provider participates under this part shall not be the sole basis for a complaint or report of unprofessional or dishonorable conduct under the State of California's Sections 800 to 809.9, inclusive, of the Business and Professions Code.

H. This part does not prevent a health care provider from providing an individual with health care services that do not constitute participation in this part.

I. Each health care entity shall post on the entity's public internet website the entity's current policy governing medical aid in dying.

J. A health care entity shall not engage in false, misleading, or deceptive practices relating to its policy concerning end-of-life care services nor engage in coercion or undue influence under this part.

#### **12.05.090 HEALTHCARE PROVIDER RESPONSIBILITIES**

The following duties are derived from Section 443.16 of California's Health and Safety Code (HSC):

A. A health care provider may not be sanctioned for any of the following:

1. Making an initial determination pursuant to the standard of care that an individual has a grievous and irremediable medical condition and informing the individual of the medical prognosis.
2. Providing information about the End of Life Option Act to a patient upon the request of the individual.
3. Providing an individual, upon request, with a referral to another physician.

B. A health care provider that prohibits activities under this part in accordance with Section 443.15 of California's Health and Safety Code (HSC) shall not sanction an individual health care provider for contracting with a qualified individual to engage in activities authorized by this part if the individual health care provider is acting outside of the course and scope of their capacity as an employee or independent contractor of the prohibiting health care provider.

C. Notwithstanding any contrary provision in this section, the immunities and prohibitions on sanctions of a health care provider are solely reserved for actions of a health care provider taken pursuant to this part. Notwithstanding any contrary provision in this part, health care providers may be sanctioned by their licensing board or agency for conduct and actions constituting unprofessional conduct, including failure to comply in good faith with this part.

#### **12.05.100 HEALTHCARE PROVIDER STIPULATIONS**

The following warnings are derived from Section 443.17 of California's Health and Safety Code (HSC):

A. Knowingly altering or forging a request for an aid-in-dying drug to end an individual's life without their authorization or concealing or destroying a withdrawal or rescission of a request for an aid-in-dying drug is punishable as a felony if the act is done with the intent or effect of causing the individual's death.

B. Knowingly coercing or exerting undue influence on an individual to request or utilize an aid-in-dying drug for the purpose of ending their life or to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without their knowledge or consent, is punishable as a felony.

C. For purposes of this section, "knowingly" has the meaning provided in Section 7 of the State of California's Penal Code.

D. The attending physician, consulting physician, or mental health specialist shall not be related to the individual by blood, marriage, registered domestic partnership, or adoption, or be entitled to a portion of the individual's estate upon death.

E. This section does not limit civil liability or damages arising from negligent conduct or intentional misconduct in carrying out actions otherwise authorized by this part by any person, health care provider, or health care entity.

F. The penalties in this section do not preclude criminal penalties applicable under any law for conduct inconsistent with the provisions of this part.

#### **12.05.110 CITY OF BERKELEY RESPONSIBILITIES TO THE STATE OF CALIFORNIA**

The following duties are derived from Section 443.19 of California's Health and Safety Code (HSC):

A. The City of Berkeley's Public Health Division and department shall collect and review the information submitted pursuant to Section 443.9 of California's Health and Safety Code (HSC). The information collected shall be confidential and shall be collected in a manner that protects the privacy of the patient, the patient's family, and any medical provider or pharmacist involved with the patient under the provisions of this part. The information shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

B. On or before July 1, 2025, and each year thereafter, based on the information collected in the previous year, the City of Berkeley's Public Health Division and department shall create a report with the information collected from the attending physician followup form and post that report to its internet website. The report shall include, but not be limited to, all of the following based on the information that is provided to the City of Berkeley's Public Health Division and department and on the department's access to vital statistics:

1. The number of people for whom an aid-in-dying prescription was written.
2. The number of known individuals who died each year for whom aid-in-dying prescriptions were written, and the cause of death of those individuals.
3. For the period commencing January 1, 2025, to and including the previous year, cumulatively, the total number of aid-in-dying prescriptions written, the number of people who died due to utilization of aid-in-dying drugs, and the number of those people who died who were enrolled in hospice or other palliative care programs at the time of death.
4. The number of known deaths in Berkeley from using aid-in-dying drugs per 10,000 deaths in California.

5. The number of physicians who wrote prescriptions for aid-in-dying drugs.
6. Of people who died due to utilizing an aid-in-dying drug, demographic percentages organized by the following characteristics:
  - a. Age at death.
  - b. Education level.
  - c. Race.
  - d. Sex.
  - e. Type of insurance, including whether or not they had insurance.
  - f. Underlying illness.

C. The department shall make available the attending physician compliance form, the consulting physician compliance form, and the attending physician followup form, as described in Section 443.22 of California's Health and Safety Code (HSC), by posting them on its internet website.

#### **12.05.120 STATE RESPONSIBILITIES RE-DELEGATED TO THE CITY OF BERKELEY**

The medical aid in dying form designing and procedural responsibilities set forth in Section 443.22 of California's Health and Safety Code (HSC) are heretofore redelegated to the City of Berkeley's Public Health Division.

#### **12.05.130 CITY OF BERKELEY PUBLIC HEALTH DIVISION RESPONSIBILITIES**

A. In accordance with the Medical Board of California (board), the City of Berkeley Public Health Division shall develop and update, as necessary, an attending physician compliance form, a consulting physician compliance form, and an attending physician followup form.

B. The forms described in subdivision (A) shall require all of the following:

1. The patient's name, date of birth, and address.
2. The name, address, phone number, and license number of all the following individuals:
  - a. The attending physician.
  - b. The consulting physician.
  - c. The mental health specialist.
  - d. The pharmacist.
3. Information relating to the patient's grievous and irremediable medical condition.
4. The name and dosage of any aid-in-dying drug and antiemetic drug prescribed, the method of delivery for the prescription, and the date the medication was prescribed.
5. The patient's time and location of death.
6. A disclosure of whether a health care provider was present at the time the patient self-administered the aid-in-dying drug.
7. A disclosure of whether the attending physician or another health care provider was present at the time of death.
8. The date the aid-in-dying drug was self-administered.
9. The date of the patient's death.
10. The time between the patient's self-administration of the lethal dose of the aid-in-dying drug and the patient's unconsciousness.
11. The time between the patient's self-administration of the lethal dose of the aid-in-dying drug and the patient's death.
12. The location where the qualified individual self-administered the aid-in-dying drug.
13. Disclosure of any complications that occurred after the patient's self-administration of the lethal dose of the aid-in-dying drug.
14. Disclosure of whether the emergency medical system was activated for any reason after the patient's self-administration of the lethal dose of the aid-in-dying drug.

C. The forms described in subdivision (A) shall also include all of the following:

1. An eligibility checklist to confirm that the patient is a qualified individual authorized to be prescribed an aid-in-dying drug pursuant to this part.
2. Compliance checklists for attending physicians, consulting physicians, and mental health specialists to confirm that all of the duties and requirements under this part have been satisfied.
3. Signed attestations of the attending physician, consulting physician, and mental health specialist that all of the duties and requirements under this part have been satisfied.
4. Disclosures of any deadlines and requirements imposed on the attending physician or consulting physician by the department with regard to the forms described in this section, including the deadline and method by which the forms are required to be returned to the department.
5. Any other information that the City of Berkeley's Public Health Division or Medical Board of California deems necessary.

D. The department shall publish the forms described in subdivision (A) and any updates to the forms on its internet website.

#### **12.05.140 MUTUAL EXCLUSIVITY OF SECTIONS**

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

#### **12.05.150 COST NULLIFICATION STATEMENT**

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



## Notice of Intent to Circulate Petition

Notice is hereby given by the person whose name appears hereon of my intention to circulate a petition within the City of Berkeley for the purpose of broadening California's End of Life Options Act (EOLA) to adults with an incurable illness or disease who want, and qualify for, aid-in-dying medicine. Existing state law restricts medical aid in dying to terminal disease, which is defined as "an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months." Also under EOLA, the aid-in-dying medicine must be self-administered, meaning the person does the "affirmative, conscious, and physical act of administering and ingesting the aid-in-dying medicine to bring about their own death." Since becoming law in 2016, it has become clear two provisions are needlessly excluding many people from accessing aid-in-dying medicine.

First is the six month prognosis required to qualify as a terminal illness. Research results are mixed on the accuracy of prognostic estimates, with higher accuracy the closer the patient is to death (within days to weeks). Relying on a faulty metric can result in improper determination of how long a person will live with a terminal prognosis. Further, people with dementia and other progressive neurological conditions will likely lose the required cognitive capacity to obtain and the physical capacity to ingest aid-in-dying medication well before they have only six months of life expectancy. Finally, people with disorders labeled as "mental" according to the Diagnostics & Statistics Manual are denied their right to choose a peaceful death.

The second issue with the EOLA is limiting how the aid-in dying drug can be taken; specifically, it must be ingested. Typically that means the medicine must be taken by mouth or otherwise entered into the digestive tract. However, many patients may lose their ability to hold a cup or swallow, and may not have the strength and coordination to use a syringe. In addition, the aid-in-dying drug can cause painful burning in the esophagus or even vomiting, even if an antiemetic medication is taken first.

The medical aid in dying initiative I am proposing not only addresses discrimination on the basis of type and length of suffering, but also gives women absolute control over their bodies. As pointed out by the Canadian Bar Association End of Life Working Group in a letter to their government: People living with mental illness are entitled to autonomy and self-determination about their health, without discrimination, and to recognition that their suffering is no less real than that of individuals affected by a illness categorized as "physical". While issues related to medical aid in dying and mental illness are complex, a general exclusion of all persons suffering from mental illness is unconstitutional. Further, requiring an individual to challenge the constitutionality of this exclusion and delay imposes an unreasonable burden that is inconsistent with the fundamental principle of equal access to justice.

Kristy Martin, Proponent

**NOTICE TO THE PUBLIC: SIGN ONLY IF IT IS THE SAME MONTH SHOWN IN THE OFFICIAL TOP FUNDERS OR YOU SAW AN "OFFICIAL TOP FUNDERS" SHEET FOR THIS MONTH, THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER, YOU HAVE THE RIGHT TO ASK.**

**INITIATIVE MEASURE TO BE DIRECTLY SUBMITTED TO THE VOTERS  
INITIATIVE TO EXPAND ON STATE LAW TO ALLOW BERKELEY RESIDENTS SUFFERING FROM  
SERIOUS ILLNESS OR DISEASE TO SELF-ADMINISTER AID-IN-DYING DRUGS**

State law allows certain individuals with a terminal illness, defined as a medically-confirmed incurable and irreversible disease that will, within reasonable medical judgment, result in death within six months, to request a prescription to receive ingestible drugs that will assist in causing that individual's death.

This initiative, if adopted, would add a chapter to the Berkeley Municipal Code that would expand upon state law in two primary ways. First, the initiative would expand the eligibility criteria for Berkeley residents to include all individuals that have a serious and incurable illness, regardless of the length of time the individual has left to live, if the illness causes physical or psychological suffering that is intolerable to the individual and has placed the individual in a state of irreversible decline, so long as it is reasonably foreseeable that the illness will be the individual's natural cause of death. Second, the initiative would expand upon state law by allowing eligible Berkeley residents to self-administer aid-in-dying drugs through an intravenous pathway in addition to self-administration through ingestion.

The initiative would also make other changes to the state law standard for purposes of administering the Berkeley-specific program. These changes would include (1) making 25 years or older the age of eligibility for Berkeley residents to request aid-in-dying drugs for serious and incurable illnesses that are not terminal illnesses; (2) clarifying that the "health care providers" who will be immune from legal liability and able to make an initial eligibility determination under Berkeley law will include nurse practitioners, physician assistants, registered nurses, and death doulas; (3) delegating responsibility over certain forms that will be used in administering the Berkeley program to the City's Public Health Division; and (4) incorporating, with certain City-specific changes, state law provisions regarding provider rights, responsibilities, and other requirements that relate to the administration of aid-in-dying drugs.

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INITIATIVE TO EXPAND ON STATE LAW TO ALLOW BERKELEY RESIDENTS SUFFERING FROM  
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State law allows certain individuals with a terminal illness, defined as a medically-confirmed incurable and irreversible disease that will, within reasonable medical judgment, result in death within six months, to request a prescription to receive ingestible drugs that will assist in causing that individual's death.

This initiative, if adopted, would add a chapter to the Berkeley Municipal Code that would expand upon state law in two primary ways. First, the initiative would expand the eligibility criteria for Berkeley residents to include all individuals that have a serious and incurable illness, regardless of the length of time the individual has left to live, if the illness causes physical or psychological suffering that is intolerable to the individual and has placed the individual in a state of irreversible decline, so long as it is reasonably foreseeable that the illness will be the individual's natural cause of death. Second, the initiative would expand upon state law by allowing eligible Berkeley residents to self-administer aid-in-dying drugs through an intravenous pathway in addition to self-administration through ingestion.

The initiative would also make other changes to the state law standard for purposes of administering the Berkeley-specific program. These changes would include (1) making 25 years or older the age of eligibility for Berkeley residents to request aid-in-dying drugs for serious and incurable illnesses that are not terminal illnesses; (2) clarifying that the "health care providers" who will be immune from legal liability and able to make an initial eligibility determination under Berkeley law will include nurse practitioners, physician assistants, registered nurses, and death doulas; (3) delegating responsibility over certain forms that will be used in administering the Berkeley program to the City's Public Health Division; and (4) incorporating, with certain City-specific changes, state law provisions regarding provider rights, responsibilities, and other requirements that relate to the administration of aid-in-dying drugs.

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**INITIATIVE MEASURE TO BE DIRECTLY SUBMITTED TO THE VOTERS  
INITIATIVE TO EXPAND ON STATE LAW TO ALLOW BERKELEY RESIDENTS SUFFERING FROM  
SERIOUS ILLNESS OR DISEASE TO SELF-ADMINISTER AID-IN-DYING DRUGS**

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**DECLARATION OF PERSON CIRCULATING PETITION SECTION (EC 104, 9238c)**

(To be completed in circulator's own hand)

I, \_\_\_\_\_, declare:  
(Print your Full name)

My residence address is \_\_\_\_\_  
and  
(Number, Street and City)

I am 18 years of age or older.

I personally circulated this petition section and witnessed each of the appended signatures being written on the petition and to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be and the appended signatures were obtained between the dates of: \_\_\_\_\_ and \_\_\_\_\_,  
inclusive.  
(Month, Day, Year) (Month, Day, Year)

I showed each signer a valid and unfalsified "Official Top Funders" sheet as required by Elections Code Section 107.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_  
(Month, Day, Year) (Place of Signing)

Signed \_\_\_\_\_  
(Signature of Petition Circulator - First Name, Middle Name or Initial, Last Name)