

## Comparison of State Laws 05 18

<b>STATE</b>	<b>California</b>	<b>Colorado</b>	<b>Hawaii</b>	<b>D.C.</b>	<b>Oregon</b>	<b>Vermont</b>	<b>Washington</b>
<b>Law</b>	"End of Life Option Act" CA Health & Saf Code §§443.1 to 443.22	"End of Life Options Act" C.R.S. 25-48-101 to 25-48-123	"Our Care, Our Choice Act" HB 2739 (Approved 4/5/18; Effective 1/1/19)	"Death with Dignity Act of 2016" (B21-0038) D.C. Law §§ 7-661.01 to 7-661.17	"Death with Dignity Act" ORS §§ 127.800 to 127.995	"Patient Choice at End of Life Act" 18 V.S.A. §§ 5281 - 5293	"Death with Dignity Act" Rev. Code Wash. (ARCW) §§70.245.010 to 70.245.220
<b>"Terminal" Definition<sup>1</sup></b>	Incurable and irreversible disease with 6 mos. life expectancy. §443.1 (q)  No reference to with or without medical treatment.	Incurable and irreversible illness with 6 mos. life expectancy. § 25-48-102 (16)  No reference to with or without medical treatment.	Incurable and irreversible disease with 6 mos. life expectancy. Section 3 § -1  No reference to with or without medical treatment.	Incurable and irreversible disease with 6 mos. life expectancy. § 7-661.01 (16)  No reference to with or without medical treatment.	Incurable and irreversible disease with 6 mos. life expectancy §127.800 s.1.01 (12)  No mention of with or without medical treatment.	Incurable and irreversible disease with 6 mos. life expectancy. §5281 (10)  No mention of with or without medical treatment.	Incurable and irreversible disease with 6 mos. life expectancy. §70.245.010 (13)  No mention of with or without medical treatment.
<b>Requests</b>	2 oral requests and 1 written request. §443.3 (a)	2 oral requests and 1 written request. § 25-48-104 (1)	2 oral requests and 1 written request. Section 3 § -2	2 oral requests and 1 written request. § 7-661.02 (a)	2 oral requests and 1 written request. §127.840 s.3.06	2 oral requests and 1 written request. § 5283 (a) (1) to (4)	2 oral requests and 1 written request. §70.245.090
<b>Requests can be communicated through translator<sup>2</sup></b>	"Interpreter" can assist in request. May not be an interested party and must meet State standards for interpreters. §443.11 (b) (3)	No reference to translator or interpreter.	No reference to translator or interpreter.	No reference to translator or interpreter.	"Capable" if has ability to make and communicate health care decisions, including through persons familiar with patient's manner of communicating. §127.800 s. 1.01 (3)	"Capable" if has ability to make and communicate health care decisions, including through persons familiar with the patient's manner of communicating. §5281 (2)	"Competent" if has ability to make and communicate informed decision, including communication through persons familiar with patient's manner of communicating. §70.245.010 (3)

STATE	California	Colorado	Hawaii	D.C.	Oregon	Vermont	Washington
<b>Counseling</b>	<p>No counseling required.</p> <p>If indications of mental disorder, physician shall refer to mental health specialist to assess whether patient has capacity to make medical decisions and is not suffering from impaired judgment. §443.1 (k) and §443.5 (a) (1)(A)(i)&amp;(ii)</p> <p>If a mentally ill patient has been involuntarily committed to a hospital and is later diagnosed with a terminal illness, the individual can petition the court. If found to qualify under the End of Life Option Act, the state shall facilitate the patient's access to assisted suicide. 9 CCR § 4601</p>	<p>No counseling required.</p> <p>Attending or consulting physician shall refer patient to licensed mental health professional for determination of whether patient is mentally capable of making an informed decision. § 25-48-108 (2) and § 25-48-106 (1) (f)</p> <p>"Mentally capable" means has the ability to make and communicate an informed decision to health care providers. § 25-48-102 (10)</p>	<p>"Counseling" only for purpose of determining that patient is "capable" and does not appear to be suffering from overtreatment or undertreatment of a condition that might interfere with patient's ability to make an informed decision. Section 3 § -1 Section 3 § -6</p> <p>Counseling may be done via telehealth.<sup>3</sup> Section 3 § -1</p> <p>"Capable" means patient has ability to understand the patient's choices for care and make and communicate health care decisions to health care providers. Section 3 § -1</p>	<p>"Counseling" only for purpose of determining that patient is competent and does not have impaired judgment. § 7-661.04</p> <p>"Counseling" defined as one or more consultations as necessary to determine that patient is "capable" and not suffering from a disorder or depression causing impaired judgment. § 7-661.01 (4)</p> <p>"Capable" means opinion that patient has the ability to make and communicate health care decisions to health care providers. § 7-661.01 (2)</p> <p>Referral for "counseling" only "if appropriate." § 7-661.03 (a) (4) § 7-661.03 (b) (3)</p>	<p>"Counseling" is one or more consultations only for purpose of determining that patient is capable and does not have impaired judgment. §127.800 s. 1.01 (5)</p> <p>Referral to psychiatrist or psychologist necessary if attending or consulting physician believes patient has psychiatric or psychological disorder causing impaired judgment. .</p> <p>Purpose is to determine if disorder is causing impaired judgment.<sup>4</sup> §127.825 s.3.03</p>	<p>No counseling required.</p> <p>If physician cannot verify that patient does not have impaired judgment, physician is to refer patient for evaluation that patient is capable, and does not have impaired judgment. §5283 (a) ( 8)</p> <p>"Capable" means patient has ability to make and communicate health care decisions to physician. §5281 (2)</p>	<p>"Counseling" only for purpose of determining that patient is competent and does not have impaired judgment. §70.245.010 (5)</p> <p>Referral for "counseling" required only "if appropriate." §70.245.040 (1) (e)</p> <p>Referral for such a determination only necessary if attending or consulting physician believes patient may have condition that is causing impaired judgment. §70.245.060</p>

<b>STATE</b>	<b>California</b>	<b>Colorado</b>	<b>Hawaii</b>	<b>D.C.</b>	<b>Oregon</b>	<b>Vermont</b>	<b>Washington</b>
<b>Witnesses<sup>5</sup></b>	2 witnesses to written request. One witness may be someone who is entitled to a portion of patient's estate. §443.3 (c) (1)	2 witnesses to written request. One witness may be someone who is entitled to a portion of patient's estate. § 25-48-104 (2) (b) (II)  Does not prohibit consulting physician from being a witness.	2 witnesses to written request. One witness may be someone who is entitled to a portion of patient's estate. Section 3 § -3  Does not prohibit consulting physician from being a witness.	2 witnesses to written request. One witness may be someone who is entitled to a portion of patient's estate. § 7-661.02 (b) (3) (B)  Does not prohibit consulting physician from being a witness.	2 witnesses to written request. One witness may be someone who is entitled to a portion of patient's estate. §127.810 s.2.02 (2) (b)	2 witnesses to written request. Neither witness may be an "interested person," including someone who is entitled to a portion of patient's estate. <sup>6</sup>	2 witnesses to written request. One witness may be someone who is entitled to a portion of patient's estate. §70.245.030 (2) (b)  Does not prohibit consulting physician from being a witness.
<b>Competency at time prescription is taken</b>	No requirement that patient knowingly and/or willingly takes drugs. All "safeguards" cease at the time prescription is filled.	No requirement that patient knowingly and/or willingly takes drugs. All "safeguards" cease at the time prescription is filled.	No requirement that patient knowingly and/or willingly takes drugs. All "safeguards" cease at the time prescription is filled.	No requirement that patient knowingly and/or willingly takes drugs. All "safeguards" cease at the time prescription is filled.	No requirement that patient knowingly and/or willingly takes drugs. All "safeguards" cease at the time prescription is filled.	No requirement that patient knowingly and/or willingly takes drugs. All "safeguards" cease at the time prescription is filled.	No requirement that patient knowingly and/or willingly takes drugs. All "safeguards" cease at the time prescription is filled.
<b>Pressure or encouragement to request lethal prescription.</b>	Makes it a felony to knowingly coerce or exert undue influence on patient to request or ingest prescription. §443.17 (b)  Does not prohibit suggesting, encouraging or applying subtle pressure on patient to request or ingest prescription.	Makes it a felony to knowingly or willingly coerce or exert undue influence on patient to request prescription. § 25-48-119 (2) (a)  Does not prohibit suggesting, encouraging or applying subtle pressure on patient to request prescription.	Makes it a felony to coerce or induce patient by force, threat, fraud or intimidation to request prescription. Section 3 § 20 (b)  Does not prohibit suggesting, encouraging or applying subtle pressure on patient to request prescription.	Makes it a felony to willfully coerce or exert undue influence on patient to request or ingest a covered medication. § 7-661.13 (b)  Does not prohibit suggesting, encouraging or applying subtle pressure on patient to request prescription.	Makes it a felony to coerce or exert undue influence on patient to request medication for the purpose of ending patient's life. §127.890 s.4.02 (2)  Does not prohibit suggesting, encouraging or applying subtle pressure on patient to request prescription.	No penalties included for coercion or undue influence. Does not prohibit suggesting, encouraging or applying subtle pressure on patient to request prescription. Physician must affirm in patient's medical record that patient appeared to be free from duress or undue influence when written request was signed. §5283 (a) (4)	Makes it a felony to coerce or exert undue influence on patient to request prescription. §70.245.200 (2)  Does not prohibit suggesting, encouraging or applying subtle pressure on patient to request prescription.

STATE	California	Colorado	Hawaii	D.C.	Oregon	Vermont	Washington
<b>Death Certificate</b>	No reference to death certificate.	Unless otherwise prohibited by law, attending physician or hospice medical director shall sign death certificate. § 25-48-109 (1)  No requirement that either be present at time of death.	Attending provider may sign death certificate which shall list terminal disease as the immediate cause of death. Section 3 § -4 (b)  No requirement attending physician be present at time of death.	Attending physician may sign the death certificate. § 7-661.05 (g)  No requirement attending physician be present at time of death.	Attending physician may sign the death certificate. §127.815 s.3.01 (2)  No requirement attending physician be present at time of death.	No reference to death certificate.	Death certificate shall list the underlying terminal disease as the cause of death. §70.245.040 (2)  Attending physician may sign patient's death certificate. §70.245.040 (2)  No requirement that physician be present at time of death.
<b>Cause of death</b>	Actions taken in accordance with the law shall not, for any purposes, constitute suicide or assisted suicide. §443.18  Death resulting from aid-in-dying drug is not suicide. §443.13 (a) (2)	Actions taken in accordance with this act shall not, for any purpose constitute suicide or assisted suicide. § 25-48-121  Cause of death shall be listed as the underlying terminal illness. § 25-48-109 (2)	Death certificate shall list terminal disease as the immediate cause of death. Section 3 § -4 (b)	Actions taken in accordance with this act do not constitute suicide or assisted suicide. § 7-661.15 (b)  Cause of death shall identify patient's underlying medical condition without reference to the fact that patient ingested a "covered medication." § 7-661.05 (h)  "Covered medication" is a medication for the purpose of ending a person's life. § 7-661.01 (5)	Actions taken in accordance with the law shall not, for any purpose, constitute suicide or assisted suicide. §127.880 s. 3.14	Action taken in accordance with chapter shall not be construed for any purpose to constitute "suicide," or "assisted suicide." §5292	Actions taken in accordance with the law shall not refer to practice under this chapter as "Suicide" or "assisted suicide." §70.245.180  Death certificate shall list the underlying terminal disease as the cause of death. §70.245.040 (2)

<b>STATE</b>	<b>California</b>	<b>Colorado</b>	<b>Hawaii</b>	<b>D.C.</b>	<b>Oregon</b>	<b>Vermont</b>	<b>Washington</b>
<b>Delivery of lethal drugs</b>	Drugs can be dispensed to a designated individual. Also can be sent by UPS, US Postal Service, Federal Express or messenger service. §443.5 (c)	Not addressed.	Drugs can be dispensed to an expressly identified agent of the patient. Section 3 § -4 (a) (12) (B) (ii)	Drugs can be dispensed to an expressly identified agent designated by the patient. § 7-661.05 (c) (C)	Drugs can be dispensed to an expressly identified agent of the patient. §127.815 s.3.01 (L) (B) (ii)	Drugs can be dispensed to an expressly identified agent of the patient. §5283 (a) (13) (B) (ii)	Drugs can be dispensed to an expressly designated agent of the patient. §70.245.040 (1) ) (1) (ii) (B)
<b>Payment for lethal drugs<sup>7</sup></b>	Insurance carriers may inform patients about the availability of coverage for doctor-prescribed suicide upon the patient's request. §443.13 (c)  Medi-Cal (California's Medicaid program) also pays for the lethal drugs with state funds.	Insurance companies determine whether to provide payment for the drugs.	Insurance companies determine whether to provide payment for the drugs.	Insurance companies determine whether to provide payment for the drugs.	Individual insurers may pay for the drugs.  The Oregon Health Plan (Oregon's Medicaid program) also pays for the drugs using state funds. <sup>8</sup>	Insurance companies determine whether to provide payment for the drugs.	Insurance companies determine whether to provide payment for the drugs.
<b>State residency required</b>	Yes §443.2 (a) (3)	Yes § 25-48-102 (13) and (14)	Yes Section 3 § -13  Factors to determine residency include, but are not limited to, state driver's license, voter registration , property ownership or lease or filing of state tax return.	Yes § 7-661.01 (13) and § 7-661.06 (a) (3) (B)	Yes §127.801 s, 1.01 (11) and §127.816 s. 3.01 (b)	Yes. Up to physician to make determination of residency. <sup>9</sup>	Yes §70.245.010 (11)  Factors to determine residency include, but are not limited to, state driver's license, voter registration or property ownership or lease. §70.245.130

---

<sup>1</sup> Patients with controllable diseases which, without medication, would result in death within 6 months are eligible for the deadly prescription under the law. Such diseases include diabetes mellitus which, in Oregon, has been listed in official reports as the underlying terminal illness. See, for example: Oregon Health Authority, Public Health Division, "Oregon Death With Dignity Act Data Summary." Available at:

<http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year19.pdf>, p. 11, n. 2. (Last accessed 6/19/17.)

In addition, a case was described by Dr. Charles Blanke, an oncologist and professor of medicine at Oregon Health and Science University. He explained that a young woman with Hodgkin lymphoma had a 90 percent chance of living for decades with recommended treatment. The woman, however, refused the treatment. "That was a very challenging situation," he said. "You have to ask yourself, 'Why doesn't that patient want to take relatively a non-toxic treatment and live for another seven decades?'" Blanke ended up prescribing the deadly overdose for the woman anyway. Tara Bannow, "Rural Oregonians Still Face Death with Dignity Barriers," *Bend Bulletin*, August 14, 2017. Available at: <http://www.bendbulletin.com/health/5512373-151/oregonians-can-choose-how-their-roads-end>. (Last accessed 8/17/17.)

<sup>2</sup> This could be someone communicating through language translation, sign language or facilitated communication. With the exception of California which has specific standards for those who may interpret or translate for the patient, there is no way to know if such communication accurately states the patient's meaning. The translator or interpreter could be intentionally or unintentionally conveying inaccurate information.

<sup>3</sup> "Telehealth" means the use of telecommunications and includes but is not limited to real-time video communication, secure interactive and non-interactive web-based communication to transmit patient medical information while a patient is at an originating site and the physician is at a distant site. HRS §453-1.3.

<sup>4</sup> Patients with depression or psychiatric or psychological disorders generally understand what they are requesting and would not be considered to have impaired judgment. Therefore a referral to counseling would not be required.

According to Oregon's official report, released in 2017, fewer than 4% of patients were referred for evaluation. See: Oregon Health Authority, Public Health Division, "Oregon Death With Dignity Act Data Summary." Available at:

<http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year19.pdf>, p. 9, Table 1. (Last accessed 6/19/17.)

<sup>5</sup> With the exception of Vermont, the laws state that one witness may not be someone who is entitled to a portion of the patient's estate. Therefore the second witness could be so entitled. The other witness, who is not an heir, could be the heir's best friend.

<sup>6</sup> The law does not mandate any specific form for the written request but the Vermont Department of Health has developed a form that it describes as being "a form which may be used" and which both providers and patients may find helpful. That report form requires each witness to attest that he or she is not an "interested person" which includes someone who would be entitled to patient's estate. The form is available at:

[http://www.healthvermont.gov/sites/default/files/documents/2016/11/End\\_of\\_Life\\_Choice\\_patient\\_medication\\_request\\_form.pdf](http://www.healthvermont.gov/sites/default/files/documents/2016/11/End_of_Life_Choice_patient_medication_request_form.pdf). (Last accessed 6/16/17.)

Also see: Vermont Department of Health, "The Patient Choice and Control at End of Life Act: Frequently Asked Questions." Available at: [www.healthvermont.gov/sites/default/files/documents/2016/11/Act39\\_faq.pdf](http://www.healthvermont.gov/sites/default/files/documents/2016/11/Act39_faq.pdf). (Last accessed 6/16/17.)

<sup>7</sup> Since the laws state that the action permitted is not to be considered suicide, individual insurance carriers can decide whether to cover the costs, just as they would consider costs for any other medical treatment.

<sup>8</sup> Oregon Public Health Division, "FAQs about the Death with Dignity Act," August 26, 2016. Available at:

<http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/faqs.aspx>. (Last accessed 6/13/17.)

<sup>9</sup> Vermont Department of Health "The Patient Choice and Control at End of Life Act: Frequently Asked Questions." Available at: [www.healthvermont.gov/sites/default/files/documents/2016/11/Act39\\_faq.pdf](http://www.healthvermont.gov/sites/default/files/documents/2016/11/Act39_faq.pdf). (Last accessed 6/16/15.)