**Nursing Home/Assisted Living Facility Logo Adoption Date:**

**Medical Aid in Dying for the Terminally Ill Act**

**(Patient’s Request for Medical Aid in Dying)**

1. **PURPOSE**

The New Jersey Medical Aid in Dying for the Terminally Ill Act (“the Act”) allows a “capable” adult patient who has been diagnosed with a terminal illness, disease or condition to request and obtain a prescription for medication (aid-in-dying medication) which the patient may “self-administer” to end the patient's life in a humane and dignified manner.

The purpose of this policy is to describe the requirements and procedures for compliance with the Act and to provide guidelines for responding to patient (resident) requests for information about aid-in-dying medication in accordance with state laws and regulations.

The requirements outlined in this policy do not preclude or replace other existing policies, including but not limited to Withdrawing or Foregoing Life Sustaining Treatment, Pain Management, Advance Directives/Practitioner Orders for Life-Sustaining Treatment (POLST), Resuscitation Status (DNR) or End-of-Life Care, referenced herein.

1. **DEFINITIONS (For purposes of this Policy)**

**Aid-In-Dying Medication**  A medication determined and prescribed by an attending physician for a qualified terminally ill patient, which the qualified terminally ill patient may choose to self-administer to bring about his or her death in a humane and dignified manner.

**Attending Physician**  The licensed physician who has primary responsibility for the treatment and care of the terminally ill patient and treatment of the patient’s terminal illness, disease or condition. An attending physician does not include a physician assistant or nurse practitioner. The attending physician may not serve as a witness to the patient’s written request for aid-in-dying medication.

**Capable/Capacity to Make Healthcare Decisions**  A patient who, in the opinion of the patient’s attending physician, consulting physician or mental health care professional, has the ability to understand the nature and consequences of a healthcare decision, the ability to understand its significant benefits, risks and alternatives and the ability to make and communicate an “informed decision” to healthcare providers.

**Consulting Physician**  A physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a patient’s terminal illness, disease or condition. A consulting physician does not include a physician assistant or nurse practitioner.

**Informed Decision**  A voluntary decision by a patient with a terminal illness, disease or condition to request and obtain a prescription for medication that the patient may choose to self-administer to end the patient's life in a humane and dignified manner, which is based on an understanding and acknowledgement of the relevant facts and made after being fully informed by the attending physician of the following:

1. The patient’s medical diagnosis and prognosis
2. The potential risks associated with taking the medication to be prescribed
3. The probable result of taking the medication to be prescribed, and
4. The feasible alternatives including, but not limited to, concurrent or additional treatment opportunities, comfort care, hospice care, palliative care and pain control.

**Mental Health Care Professional**  Only a licensed psychiatrist, licensed psychologist or licensed clinical social worker may act as a mental health care professional. A mental health care professional does not include a physician assistant or nurse practitioner.

**Self-Administer**  A qualified terminally ill patient’s physical act of administering the aid-in-dying medication to the patient’s own self.

**Surrogate**  A surrogate decision maker may be a healthcare representative appointed in an advance directive, a patient representative under POLST, a court-appointed guardian or a conservator.

**Terminally Ill**  Terminally ill means that the patient is in the terminal stage of an irreversibly fatal illness, disease or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six (6) months or less.

1. **POLICY**
2. The Act allows adult[[1]](#footnote-2) terminally ill patients, with the capacity to make healthcare decisions to request aid-in-dying medication from an attending physician. The terminally ill patients must be New Jersey residents. Terminally ill patients requesting an aid-in-dying medication must satisfy all requirements of the Act to be considered “qualified” terminally ill patients and obtain the prescription for that medication. Such a request must be initiated by the terminally ill patient and cannot be made through utilization of an Advance Directive, POLST or other document. It cannot be requested by the terminally ill patient’s surrogate.
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NURSING HOME/ASSISTED LIVING] allows its physicians, mental health care professionals and other healthcare providers to **voluntarily** participate in activities authorized by the Act, if they so choose. NURSING HOME/ASSISTED LIVING physicians, mental health care professionals and other healthcare providers may, as applicable and as defined in the Act and herein:
   1. Perform the duties of an attending physician.
   2. Perform the duties of a consulting physician.
   3. Perform the duties of a mental health care professional.
   4. Prescribe medication under this Act.
   5. Fill a prescription under this Act.
   6. Be present when the qualified terminally ill patient self-administers the aid-in-dying medication provided that the physician, mental health care professional or healthcare provider does not participate or assist the patient in self-administering the medication.
   7. Participate in patient or provider support related to the Act.
4. [Optional] [When a patient makes an inquiry about or requests access to activities under the Act, the patient will initially be referred to their attending physician or the NURSING HOME/ASSISTED LIVING Medical Director who will assist the patient in understanding the requirements, inform them about the process and provide educational material related to the patient’s options. This activity will augment, but not substitute for, the obligations of the attending and consulting physicians’ roles described herein. If the patient’s NURSING HOME/ASSISTED LIVING physician chooses not to participate in the Act, which is his or her right under the law, the Medical Director may assist in the identification of a NURSING HOME/ASSISTED LIVING physician who does participate.]
5. NURSING HOME/ASSISTED LIVING neither encourages nor discourages participation in the Act. Participation is entirely voluntary. Only those physicians, mental health care professionals and healthcare providers who are willing and desire to participate should do so. Those persons who do choose to participate are reminded that the overall goal is to support the patient’s end-of-life wishes and that participation may not necessarily result in aid-in-dying medication being prescribed.
6. If the attending or consulting physician determines that the terminally ill patient who has requested aid-in-dying medication may not be capable, the attending or consulting physician shall refer the terminally ill patient to a mental health care professional to determine whether the patient is capable. A consulting physician who refers the patient to a mental health care professional must provide written notice of the referral to the attending physician. Thereafter, the attending physician may not prescribe an aid-in-dying medication until the mental health care professional notifies the physician in writing of their determination that the patient is capable.
7. NURSING HOME/ASSISTED LIVING may provide oversight and review records necessary to ensure all requirements of the Act have been followed and the correct documentation completed and submitted.
8. **PROCEDURES**
9. Information Requests from Terminally Ill Patients

Upon request, NURSING HOME/ASSISTED LIVING staff will provide patients with a Patient Information sheet regarding the Act. The Patient Information Sheet will inform patients about their rights under the Act, as well as our policy to continue to provide standard services to patients regardless of their stated interest or intent in pursuing this legal right.

1. Patient Eligibility to Request Aid-in Dying Medication

NURSING HOME/ASSISTED LIVING adult patients who have the capacity to make healthcare decisions and have a terminal illness, disease or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six (6) months or less are eligible to request aid-in-dying medication from their attending physician.

Terminally ill patients are qualified to receive a prescription for an aid-in-dying medication if all of the following conditions are met:

1. The terminally ill patient meets the eligibility requirements.
2. The terminally ill patient has voluntarily requested an aid-in-dying medication on three (3) separate occasions as described herein.
3. The attending physician determines that the terminally ill patient is making an informed decision and has fully informed the patient of all feasible alternatives and treatment options.
4. A consulting physician has provided a medical confirmation of the attending physician’s diagnosis and prognosis after examining the patient and relevant medical records and confirmed the patient is acting voluntarily and making an informed decision.
5. If the attending physician or the consulting physician determines that the patient may not be capable, the physician shall refer the patient to a mental health care professional to determine whether the patient is capable.
6. The mental health care professional determines the patient is capable and notifies the attending physician in writing of that determination.
7. The patient is able to self-administer the aid-in-dying medication.
8. The patient is a New Jersey resident and is able to establish residency through at least one of the following:
   1. Possession of a New Jersey driver’s license or identification card issued by the New Jersey Motor Vehicle Commission
   2. Proof that the patient is registered to vote in New Jersey
   3. A New Jersey resident gross income tax return filed for the most recent tax year, or
   4. Any other government record that the attending physician reasonably believes demonstrates the individual’s current residency in New Jersey.
9. A patient must not be considered a “qualified terminally ill patient” under the Act solely because of age or disability or a diagnosis of any specific illness, disease or condition.
10. The attending physician has fulfilled all the requirements of the Act as set forth in the Act.
11. Method of Request for Aid-in-Dying Medication and Documentation Requirements

Requests for aid-in-dying medication must come directly and solely from the patient who will self-administer the medication. Such requests cannot be made by a patient’s surrogate or by the patient’s healthcare provider.

To make a request for a prescription for an aid-in-dying medication, the terminally ill patient must directly submit to his or her attending physician:

**Two (2) oral requests** (made in person) that are made a minimum of fifteen (15) days apart. Patients who are unable to speak because of their medical condition shall communicate their request in a manner consistent with their inability to speak, such as through sign language. The attending physician must document these requests in the medical record (the Act does not specify any particular language); **AND**

**One (1) written request** using the form required by the State of New Jersey “Request for Medication to End My Life in A Humane and Dignified Manner” (NURSING HOME/ASSISTED LIVING Form X). Form X must be placed in the patient’s medical record. Form X sets forth the following conditions:

1. The written request form (Form X) must be signed and dated, in the presence of two (2) witnesses, by the patient seeking the aid-in-dying medication.
2. The witnesses must also sign the form and by so doing attest that to the best of their knowledge and belief the patient is all of the following:
   1. An individual who is personally known to them or has provided proof of identity
   2. An individual who voluntarily signed the request in their presence
   3. An individual whom they believe to be of sound mind and not under duress, fraud or undue influence.
3. The patient’s attending physician may not serve as a witness.
4. Additionally, **one (1) witness must not be**: (i) related to the requesting patient by blood, marriage or adoption; (ii) entitled to a portion of the requesting patient’s estate upon death (whether by operation of law or by will); or (iii) own, operate or be employed at a healthcare facility, other than a long term care facility, where the person is a patient or resident.
5. The request may not be made through a nurse, social worker, nurse practitioner or physician assistant. Any NURSING HOME/ASSISTED LIVING employee or contractor must notify the attending physician about any patient request for aid-in-dying medication.
6. Responsibility of Attending Physicians

The responsibilities of an attending physician are non-delegable. The NURSING HOME/ASSISTED LIVING Medical Director may serve as an attending physician if they qualify as such pursuant to the Act’s definition of attending physician. Before prescribing the aid-in-dying medication, the attending physician must do all of the following:

1. Make the initial determination about whether the patient is eligible under the Act as described in Section IV.B. (above) including a determination that:
2. The adult patient has the capacity to make healthcare decisions, and
3. The patient has a terminal illness, disease or condition with a prognosis of a life expectancy of six (6) months or less, medically confirmed by a consulting physician.
4. Make additional determinations that:
5. The patient has made a voluntary request for an aid-in-dying medication, including completion of witness attestations that the patient is of sound mind and not under fraud, duress or undue influence.
6. The patient’s request does not arise from coercion or undue influence. The physician must do this by discussing with the patient, outside the presence of any other person (except for a NURSING HOME/ASSISTED LIVING-provided interpreter) whether the patient is feeling coerced or unduly influenced by another person. Family members or friends of the patient cannot act as interpreters.
7. The patient has met the residency requirements of the Act.
8. The patient is making an informed decision as defined herein.
9. Refer the patient to a consulting physician.
10. Refer the patient to a mental health care professional if the attending physician determines the patient is not capable for a determination that the patient is capable. This determination must be documented in the patient’s medical record.
11. Inform and advise the patient about the following:
12. Having another person present when he or she self-administers the aid-in-dying medication.
13. Not self-administering the aid-in-dying medication in a public place.[[2]](#footnote-3)
14. Notifying the next of kin of his or her request for an aid-in-dying medication. A patient who declines or is unable to notify next of kin must not have his or her request denied for that reason.
15. Feasible alternatives to taking the medication, including, but not limited to, concurrent or additional treatment opportunities, palliative care, comfort care, hospice care and pain control.
16. Maintaining the aid-in-dying medication in a safe and secure location until the patient self-administers it.
17. Inform the patient that he or she may withdraw or rescind the request for an aid-in-dying medication at any time and in any manner. The patient has the right to change his or her mind without regard to his or her mental state. Therefore, if a patient makes a request for an aid-in-dying medication while having the capacity to make healthcare decisions, then loses his or her capacity, the patient can still decide not to self-administer the aid-in-dying medication.
18. Offer the patient an opportunity to withdraw or rescind the request for an aid-in-dying medication at the time the patient makes the **second** oral request.
19. Confirm that all requirements are met and all appropriate steps are carried out in accordance with the Act (as outlined in this Policy) before writing a prescription for an aid-in-dying medication.
20. Fulfill all the documentation requirements.
21. Responsibility of Consulting Physicians

A physician who chooses to act as a consulting physician must not be involved in the patient’s healthcare and must do all the following:

* 1. Examine the patient and his or her relevant medical records.
  2. Confirm in writing the attending physician’s diagnosis and prognosis.
  3. Determine that the individual has the capacity to make healthcare decisions, is acting voluntarily and has made an informed decision.
  4. Refer the patient to a mental health care professional if the consulting physician determines that the patient may not be capable for a determination as to whether the patient is capable. A consulting physician who refers the patient to a mental health care professional must provide written notice of the referral to the attending physician.
  5. Fulfill the documentation requirements.

1. Responsibility of Mental Health Care Professionals

A licensed psychiatrist, psychologist or clinical social worker who chooses to act as a mental health care professional must conduct one or more consultations with the patient and do all of the following:

* 1. Examine the terminally ill patient and his or her relevant medical records.
  2. Determine that the terminally ill patient has the capacity to make healthcare decisions, act voluntarily and make an informed decision.
  3. Submit a written report to the attending physician regarding the determination of whether the patient is capable.
  4. Document in the patient’s medical record a report of the outcome and determinations made as part of the mental health care professional’s determination.
  5. Fulfill the documentation requirements.

1. Documentation requirements

All of the following must be documented in the patient’s medical record:

* 1. All oral requests for aid-in-dying medication.
  2. All written requests for aid-in-dying medication.
  3. The attending physician’s diagnosis and prognosis of the patient’s terminal illness, the determination that the terminally ill patient has the capacity to make healthcare decisions, is acting voluntarily and has made an informed decision, or that the attending physician has determined that the individual is not a qualified patient.
  4. The consulting physician’s confirmation of the attending physician’s diagnosis and prognosis; the determination that the patient has the capacity to make healthcare decisions, is acting voluntarily and has made an informed decision, or that the consulting physician has determined that the individual is not a qualified patient.
  5. A report of the determination made by the mental health care professional.
  6. The attending physician’s offer to the patient to withdraw or rescind his or her request at the time of the second oral request.
  7. A note by the attending physician indicating that all requirements of the Act have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying medication prescribed.
  8. Death Certificate: The Act provides that actions taken under the Act shall not, for any purpose, constitute suicide, assisted suicide, homicide or elder abuse. It is NURSING HOME/ASSISTED LIVING policy that the physician reference the patient’s underlying medical illness, disease or condition that qualified the patient for the aid-in-dying medication as the underlying cause of death.

1. Prescribing or Delivering the Aid-In-Dying Medication

After the attending physician has fulfilled his or her responsibilities under the Act, the attending physician may deliver the aid-in-dying medication by of the following methods:

* + - 1. Dispensing the aid-in-dying medication directly, including ancillary medication intended to minimize the patient’s discomfort, if the attending physician meets all of the following criteria:
         1. Is authorized to dispense medicine under the law (the Act does not specify which medications may be prescribed as aid-in-dying medication), and
         2. Has a current U.S. Drug Enforcement Agency certificate of registration.
      2. Contact a pharmacist, informing the pharmacist of the prescription, and delivering the written prescription personally, by mail, or electronically to the pharmacist. It is not permissible to give the patient a written prescription to take to a pharmacy. The pharmacist may dispense the aid-in-dying medication to the patient, the attending physician or the expressly identified agent of the patient. This designation may be delivered to the pharmacist in writing or verbally.
      3. Delivery of the dispensed aid-in-dying medication to the patient, the attending physician, or an expressly designated agent of the patient may be made by personal delivery. Medication may not be dispensed to the patient via mail or any other form of courier.
      4. Physicians should counsel patients that aid-in-dying medication that the patient chooses not to self-administer should be properly disposed of consistent with state and federal guidelines regarding disposal of prescription medication or surrendering the medication to a prescription medication drop-off receptacle. The patient should designate a person who will be responsible for lawful disposal of the medication.

1. **NURSING HOME/ASSISTED LIVING Staff Roles**
2. Patients may want to discuss the option of the Act with the NURSING HOME/ASSISTED LIVING staff member. The NURSING HOME/ASSISTED LIVING staff member will respond to patient questions or statements regarding the end-of-life option with respect and compassion. The NURSING HOME/ASSISTED LIVING staff member may inquire about the patient’s concerns, fears, symptoms, etc. to identify the patient’s experience and priorities, with the goal to improve patient care.
3. The NURSING HOME/ASSISTED LIVING staff member may not disclose these discussions with a patient’s family members or others. While it is recommended that patients inform their families of their wishes regarding a request for aid-in-dying medication, patients are not legally required to inform their families or caregivers of their wishes.
4. Patients who request further information or who are seriously considering making a request for aid-in-dying medication should be advised of the need to begin the process by speaking to their attending physician or the Medical Director.
5. NURSING HOME/ASSISTED LIVING staff members may never coerce or exert undue influence on a patient regarding these issues.
6. The NURSING HOME/ASSISTED LIVING staff member will respect the patient’s decision and continue to provide care as indicated by the patient’s needs.
7. It is the NURSING HOME/ASSISTED LIVING staff member’s responsibility to inform their supervisor or other appropriate manager (Administrator or Director of Care Services) of any concerns or reluctance around caring for patients who are requesting aid-in-dying medication, including discussions and requests for information.
8. The NURSING HOME/ASSISTED LIVING staff member may respectfully ask their supervisor to transfer patients who are considering or have obtained aid-in-dying medication to another staff person without any fear of discipline or retaliation.
9. **NURSING HOME/ASSISTED LIVING Staff Presence at Time of Patient Death**

NURSING HOME/ASSISTED LIVING staff members may be present at the time of death to provide emotional support for the patient, family and others in attendance, only under the following circumstances:

1. The patient specifically requests the NURSING HOME/ASSISTED LIVING staff member’s presence. The NURSING HOME/ASSISTED LIVING staff member **shall not assist** the patient in the administration of aid-in-dying medication. This is not intended to prohibit the provision of appropriate comfort measures, even if such measures, such as symptom management for pain or nausea, have the consequence of hastening death.
2. The NURSING HOME/ASSISTED LIVING staff members may be present while the patient self-administers the aid-in-dying medication.
3. The NURSING HOME/ASSISTED LIVING staff member discusses the patient request for presence at time of death with the appropriate or designated staff (Registered Nurse Case Manager and Direct of Care Services) in a timely fashion and receives approval prior to agreeing to attend patient’s death.
4. The NURSING HOME/ASSISTED LIVING staff member may assist with the preparation of medication, if necessary.
5. The patient is planning to self-administer medication during the NURSING HOME/ASSISTED LIVING staff member’s normal work time. NURSING HOME/ASSISTED LIVING will also encourage the patient to have another adult present in addition to the NURSING HOME/ASSISTED LIVING staff member.
6. The NURSING HOME/ASSISTED LIVING staff member’s presence at time of death will be documented in routine death notes as with any death.

**VII. Reporting a New Jersey Medical Aid in Dying for the** **Terminally Ill act Death**

NURSING HOME/ASSISTED LIVING will report a patient’s cause of death after self-administration of the aid-in-dying medication as the patient’s underlying diagnosis. NURSING HOME/ASSISTED LIVING will not report the aid-in-dying medication or the Act as the cause of death.

1. Adults are 18 years or older. [↑](#footnote-ref-2)
2. Public place means any street, alley, park, public building or 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. [↑](#footnote-ref-3)