

**State of California
Office of Administrative Law**

In re:
Department of Developmental Services

Regulatory Action:

Title 17, California Code of Regulations

Adopt sections: 51000, 51001, 51002

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2017-0113-01

OAL Matter Type: Emergency Readopt (EE)

The Department of Developmental Services (Department) submitted this emergency readoption action to keep in effect three sections adopted in title 17 of the California Code of Regulations. The three sections implement the Department's protocols and procedures for individuals residing in a developmental center or state-operated facility under Department jurisdiction who wish to exercise their rights under the End of Life Option Act (Act). The proposed regulations preclude Department employees and others acting on the Department's behalf from providing end-of-life options on Department premises; establish procedures for transferring a terminally ill individual residing in a developmental center or state-operated facility under Department jurisdiction to an appropriate community setting once the individual requests to exercise his or her rights under the Act; and provide an appeal process for terminally ill individuals seeking to participate in end-of-life options under the Act on the premises of a Department facility when no community setting option is available.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code. This emergency regulatory action is effective on 1/23/2017 and will expire on 4/25/2017. The Certificate of Compliance for this action is due no later than 4/24/2017.

Date: January 23, 2017



Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: Nancy Bargmann
Copy: Alyssa Carroll

NOTICE PUBLICATION REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2017-0113-01EE
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For use by Office of Administrative Law (OAL) only

2017 JAN 13 A 10:14

OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JAN 23 2017

1:40 p.m.

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Department of Developmental Services

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) DDS End of Life Option Act Implementation Regulations	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2016-0713-02ER, 2016-0615-05E <i>per agency request</i>
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 51000, 51001, 51002
	AMEND None
	REPEAL None
TITLE(S) 17	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) January 23, 2017
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

Alyssa Carroll	TELEPHONE NUMBER (916) 654-3405	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) alyssa.carroll@dds.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Eric Gelber</i>	DATE 1/3/17
TYPED NAME AND TITLE OF SIGNATORY Eric Gelber, Assist. Dir., Legislation & Regulations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 23 2017

Office of Administrative Law

California Code of Regulations
Title 17, Division 2,
Chapter 1. General Provisions
Subchapter 10. End of Life Option Act
Article 1. General

Section 51000: End of Life Option Act

(a) All terminally ill individuals residing in a developmental center or state-operated facility under the jurisdiction of the Department of Developmental Services shall receive appropriate and necessary medical care for their terminal condition, including counseling, hospice, and palliative care, as deemed appropriate by the individual's interdisciplinary team.

(b) Except as provided in section 51002, the Department of Developmental Services shall not provide aid-in-dying drugs under the End of Life Option Act, part 1.85 (commencing with section 443) of division 1 of the Health and Safety Code, to any terminally ill resident in a developmental center or state-operated facility, and shall not permit its employees, independent contractors, or other persons to provide the end-of-life option on the premises of any Department facility or while acting within the course and scope of any employment by, or contract with, the Department.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Sections 443.1, 443.2, 443.3, 443.4, 443.14 and 443.15, Health and Safety Code; Sections 4484, 4485 and 4486, Welfare and Institutions Code.

Section 51001. Individuals Determined to be Terminally Ill and Choosing to Exercise End of Life Option Act

(a) For any adult residing in a developmental center or state-operated facility under the jurisdiction of the Department of Developmental Services, who has capacity to make medical decisions and who is diagnosed with a terminal disease, as those terms are defined in the End of Life Option Act, and who wishes to exercise his or her rights under the End of Life Option Act, the Department shall take the following actions:

(1) For individuals residing at the Sonoma Developmental Center, the Fairview Developmental Center, the general treatment program of the Porterville Developmental Center or a state-operated facility under the jurisdiction of the Department, the Department and appropriate regional center shall make arrangements to transfer the individual to an appropriate community setting that will permit the individual to exercise his or her rights under the End of Life Option Act. The transfer shall be made only if it is medically feasible, and the transfer may be delayed until the individual is

ready to ingest the aid-in-dying drug if the individual wishes to remain at the developmental center or state-operated facility until that time. The transfer shall comply with the requirements of the Lanterman Developmental Disabilities Services Act, its implementing regulations, and the developmental center's or state-operated facility's existing policies and procedures. The transfer shall be as soon as possible consistent with the individual's desires and medical status, but in no instance later than 30 days from the final request date needed in order for the person to exercise his or her rights under the End of Life Option Act. The transfer made pursuant to this subdivision shall be a provisional placement from the developmental center or state-operated facility, and the individual has a right of return to the developmental center or state-operated facility if he or she decides not to ingest aid-in-dying drugs after being transferred to the community setting.

(2) For individuals committed to a Department facility pursuant to Penal Code section 1370.1 for competency evaluation, the Department shall file and serve a notice to the committing court, district attorney, public defender or other counsel for the defendant, and regional center that the defendant seeks to exercise his or her rights under the End of Life Option Act. The notice shall be filed and served no later than seven days from the final request date needed in order for the person to exercise his or her rights under the End of Life Option Act. The Department shall seek to secure a prompt hearing following the filing of the notice to the committing court, district attorney, public defender or other counsel for the defendant, and regional center. The regional center shall identify for the court a community setting, if any, that will allow the defendant to exercise his or her rights under the End of Life Option Act.

(3) For individuals committed or transferred to a Department facility pursuant to Welfare and Institutions Code section 6500 et seq., the Department shall file and serve a notice to the committing court, district attorney, public defender or other counsel for the individual, and regional center that the person seeks to exercise his or her rights under the End of Life Option Act. The notice shall be filed and served no later than seven days from the final request date needed in order for the person to exercise his or her rights under the End of Life Option Act. Within 30 days of service of the notice, the individual's regional center shall identify an appropriate community setting, if any, that will allow the individual to exercise his or her rights under the Act. Within seven days of the regional center's identification of the community setting, the Department shall issue the notice specified in Welfare and Institution Code section 6509, subdivision (d), of the Department's intent to transfer the individual to the community setting identified by the regional center. Pursuant to Welfare and Institutions Code sections 6500 and 6502, any interested person may move the court to terminate a commitment made

pursuant to Welfare and Institutions Code section 6500 et seq. for any person identified as having a terminal condition.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Sections 443.1, 443.2, 443.3, 443.4, 443.14 and 443.15, Health and Safety Code; Section 1370.1, Penal Code; Sections 4440, 4484, 4485, 4486, 6500, 6509 and 7505, Welfare and Institutions Code.

Section 51002. Appeal to the Director

If the regional center is not able to identify an appropriate community setting that will allow the individual residing at the Sonoma Developmental Center, the Fairview Developmental Center, the general treatment program of the Porterville Developmental Center, or a state-operated facility under the jurisdiction of the Department to exercise his or her rights under the End of Life Option Act, the executive director of the developmental center or state-operated facility shall inform the individual verbally and in writing of the right to appeal to the Director of the Department of Developmental Services to permit him or her to ingest aid-in-dying drugs at the developmental center or state-operated facility. If the individual states his or her desire to appeal, the Director shall consider the totality of circumstances in granting or denying the appeal, and shall issue his or her decision within 14 days of the appeal.

Authority: Sections 4441 and 4449, Welfare and Institutions Code. Reference: Sections 443.1, 443.2, 443.3, 443.4, 443.14 and 443.15, Health and Safety Code; Sections 4404, 4440, 4484 and 4485, Welfare and Institutions Code Sections.