

*This guide is to help healthcare practitioners understand their responsibilities to people who choose to receive assisted dying. It outlines how the Code of Health and Disability Services Consumers' Rights (the Code) applies under the End of Life Choice Act 2019, and how the Health and Disability Commissioner (HDC) manages related complaints.*

# Assisted dying: Practitioners' responsibilities under the Code

On 7 November 2021, assisted dying became part of the health and disability system. The Code of Health and Disability Services Consumers' Rights applies, and people who choose to receive the service can complain to the Health and Disability Commissioner.

The End of Life Choice Act 2019 (EOLC Act) changed some aspects of the Code in important ways. Even if you are not involved in providing this service, it's important to understand your responsibilities under the Code to people who request it.

The EOLC Act sets out the specific eligibility criteria, assessment process, and safeguards for the assisted dying service, and informs appropriate standards of care. The Ministry of Health website contains information on the Act and resources for health professionals working in different settings: [www.health.govt.nz](http://www.health.govt.nz).

**Just like other forms of health care, people requesting assisted dying services have certain rights under the Code.**

These include the right to be treated fairly and with respect, to care and support that meets their needs and is culturally appropriate, to make choices about their care, to discuss their care in a way that they understand, and to receive good quality services. If they do not receive care of an appropriate standard, then they have the right to complain to HDC. The full Code can be found on the HDC website: [www.hdc.org.nz](http://www.hdc.org.nz).

The patient-first principles that inform your practice also apply in this space. However, the EOLC Act changed people's rights under the Code in a few areas.

## ➤ Providing information to those in your care

Normally under the Code, a person has the right to all the information they need to make an informed decision about their care, including all of the options available to them. But under the Act, you cannot initiate any discussion with a person that is substantially about assisted dying unless the person requests that you do so. That is, your patient must start the conversation about assisted dying.

This does not mean you cannot discuss end-of-life care. It is essential that people can express what's important to them and their whānau, and make decisions about their care at the end of life. Advanced care planning is part of good practice, and assisted dying may well come up as part of those conversations. Practitioners just need to be sure that they do not present the option of assisted dying if it has not been raised by their patient first.

This requirement also supports cultural safety for your patients and upholds their right to services that meet their needs. Assisted dying remains a sensitive topic for many in our communities, and talking about it without prompting from your patient may affect your therapeutic relationship.

Once the person has raised the topic of assisted dying, Right 6 of the Code applies in full. They have the right to all relevant information, including an explanation of all of their options and the risks. Given the many steps involved in the assisted dying process, it is important that people are provided with enough information at every step to be able to make an informed choice.

### ➤ **Conscientious objection**

Under the EOLC Act, medical practitioners do not have to be involved in providing assisted dying if they have a conscientious objection to doing so. However, they still have a responsibility to inform the person requesting the service of their objection, and their right to contact the Support and Consultation for End of Life in New Zealand Group (SCENZ) for the name and details of a medical practitioner who is willing to participate. Other healthcare practitioners with a conscientious objection can also follow these steps.

Your obligations under the Code are broader. Even if you are not prepared to provide assisted dying, you are still responsible for providing quality care for that person. For example, under Right 5 of the Code, the person has the right to effective communication, including an environment that enables open, honest, and effective discussion. Right 4(5) also requires that you cooperate with any medical practitioner assisting the person, to ensure quality and continuity of care.

### ➤ **Competence to make decisions**

According to Right 7(2) of the Code, a person is presumed competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that they are not competent. But, under the EOLC Act, a person's competence to make an informed decision must be assessed in order to be eligible for assisted dying, as set out in the legislation.

### ➤ **The use of advance directives**

Right 7(5) of the Code states that a person may use an advance directive in accordance with the common law. But under the EOLC Act, an advance directive cannot be used to determine the wishes of the patient with respect to assisted dying.

**These provisions in the Act are about preserving people's autonomy while protecting them from harm. The HDC will continue to monitor the impact on consumers.**

## Issues and challenges

### ➤ Involving family and carers

Whānau and carers can play an important role in supporting a person through the process, if the person wants them to. The person who chooses to receive assisted dying does not have to discuss it with their whānau, as the attending medical practitioner cannot raise it with the family without the person's consent. The Act does require that attending medical practitioners encourage people to talk to their whānau or other support people, and there should be opportunity for the person to do so.

Where whānau are involved, you should help them to understand the process, discuss their support needs, and enable them to contribute to care planning where appropriate.

### ➤ The individual's choice

Some complaints may allege coercion by family members, caregivers, or health professionals. The Act is clear that assisted dying is an individual and personal choice, to consider and make. It includes a number of safeguards to ensure that the person reaches that decision independently, without influence from anyone else.

Medical practitioners are expected to be alert to any signs indicating the person is being pressured about their choice. If you are concerned, you should talk to other people involved in that person's care, including family members (where you have the person's permission). Whānau, carers, welfare guardians, or those who hold enduring powers of attorney, cannot request assisted dying on behalf of another person.

### ➤ Record-keeping

The Act requires that medical practitioners complete a number of forms and records when a person requests assisted dying, and when the request is confirmed, to determine eligibility and so on. But good record-keeping is essential in any situation where assisted dying is discussed. This documentation will be an important record, and something that HDC will refer to when responding to complaints.

Regarding complaints about how a doctor has determined competence, the Act is clear about what makes a person competent, and about the process required to determine competence. It is essential, if you are determining competence, that you follow and document this process.

### ➤ Access to the service

Access may also be the subject of complaints by people wanting the assisted dying service. Some healthcare providers – such as residential care homes and hospices – may not permit assisted dying on their premises. If you are an attending medical practitioner or attending nurse practitioner, you will need to provide advice on what options the person may have.

## How complaints are addressed

HDC's approach to addressing complaints about assisted dying is similar to how we address complaints about other healthcare services.

Anyone may make a complaint to HDC – including whānau, family, friends, or caregivers of the person choosing to receive assisted dying. Depending on the circumstances, we may suggest that the person making the complaint raises it with the healthcare providers concerned, as they may be able to sort out the problem quickly.

The person making the complaint may also work with an advocate from the Nationwide Health and Disability Advocacy Service, who can help them understand their options and support them to raise concerns with the healthcare provider(s). Where advocates identify serious issues, or where the healthcare provider is not cooperating, they can refer complaints to HDC.

The person can also approach HDC directly, or the Registrar (assisted dying) at the Ministry of Health. The Registrar can refer them to HDC, the Medical Council, the Nursing Council, or another relevant agency.

Full details of how HDC resolves complaints are on our website: [www.hdc.org.nz](http://www.hdc.org.nz).

## What you can expect from HDC

Our focus is on ensuring that the rights of people using any health or disability service are upheld – including at the end of life. If you are the subject of a complaint, we will let you know and give you an opportunity to present your view. You can expect us to resolve the issue fairly and efficiently, and to keep you informed of how the complaint is progressing. Where we decide to undertake a formal investigation, we will notify you.

## For more information

The End of Life Choice Act (2019) sets out the legal framework and a high-level process for accessing assisted dying, including strict eligibility criteria and safeguards. You can read more about the End of Life Choice Act on the New Zealand Legislation website:

[www.legislation.govt.nz](http://www.legislation.govt.nz).

The Ministry of Health has led the implementation of the End of Life Choice Act 2019. Full information for the public, health professionals, and service providers can be found on the Ministry's website: [www.health.govt.nz](http://www.health.govt.nz).