

**From:** [BARAK Wolff](#)  
**To:** [Apodaca, Sheila, DOH](#)  
**Cc:** [Padilla, Michael A, DOH](#); [Debbie Armstrong](#); [Rob Schwartz](#); [Geter, Kenneth, DOH](#)  
**Subject:** [EXTERNAL] Comments of Draft Rule 7.2.2 NMAC  
**Date:** Thursday, September 8, 2022 2:36:16 PM  
**Attachments:** [EOLONMCommentsDraftDOHRegs.docx](#)

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Sheila:

On behalf of End of Life Options New Mexico, thank you for the opportunity to comment on the proposed rule. Attached is a letter with our comments and suggestions. We do anticipate being represented at the virtual hearing on Sept. 20th. I would appreciate it if you can acknowledge receipt of this email communication. Be in touch if you have any questions or need additional information.

Barak Wolff, Chair  
EOLONM  
505-231-3725



September 2, 2022

Sheila Apodaca  
Paralegal/Legal Assistant  
Office of General Counsel  
New Mexico Department of Health  
1190 S. St. Francis Drive Suite N-4095  
Santa Fe, NM 87505

Dear Ms. Apodaca:

These comments are submitted on behalf of End of Life Options New Mexico (EOLONM), a nonprofit that was created specifically to assist with the implementation of the Elizabeth Whitefield End-of-Life Options Act (Act). We appreciate the opportunity to submit these public comments on the proposed regulations regarding the Department's responsibilities under the Act in regards to reporting for medical aid in dying.

**Background:**

It's been about 14 months since the Act went into effect and overall we are pleased with the response from the public and from health care providers that medical aid in dying is an important option to reduce suffering of qualified individuals at the end of life. EOLONM manages an informational website that allows the public and clinicians to understand the law and has a cadre of trained volunteers to assist requesting clients and their loved ones connect with willing providers to assess eligibility and obtain appropriate services, consistent with the Act. Informally we estimate that there have been at least 130 maid assisted deaths throughout New Mexico that we have knowledge of through our relationships with clients and providers.

**Comments on Proposed Regulations:**

- 1) 7.2.2.3 Statutory Authority: the 5<sup>th</sup> line should identify the name of the act in addition to the citation, as it is with the other authorities. So, it should read something like:

“These regulations also implement reporting for medical aid in dying under the Elizabeth Whitefield End-of-Life Options Act , Section 24-1-43 NMSA 1978.”

2) 7.2.2.26 Reporting; Medical Aid in Dying:

- A. After the first sentence please consider adding a sentence that indicates something like, “The current version of the Medical Aid-in-Dying Reporting Form will be posted and available to download on the DOH website. (Note: there has been a problem in accessing the current reporting form and we feel that it should be easily accessible. Also, we have a number of comments about the Reporting Form that we include at the end of these Comments.)
- B. We greatly appreciate your changing the language in these regulations to speak of “ingestion”.
- C. The end of the first sentence in this section requires a second form be submitted as necessary “within 3 months of issuing the prescription”. We feel that this should be changed to “within 6 months of issuing the prescription.” Under the Act, patients qualify for maid if death is likely to occur within 6 months, which is the same time frame used for qualification for the Medicare hospice benefit. It makes sense to use the same time frame here. Based on many years of experience with medical aid in dying in other states that have authorized medical aid in dying, it is not uncommon for patients to become qualified, have their prescription written and held at the pharmacy until they are ready to end their life.

In addition, we suggest that the final sentence be deleted entirely. “Unknown” can be an acceptable final disposition in some circumstances where a patient may decide to leave the state or otherwise not be available for the provider to follow up with. We suggest that when the Form is revised there should be a space included for an explanation of any disposition that is described as “unknown” after 6 months.

- D. We strongly suggest adding to this section a subsection D that explains how NMDOH will comply with the requirement in the law that they “promulgate an annual statistical report”. We feel that this annual report should be described in these regulations pursuant to the Act and that you should indicate the annual time frame that will be included (calendar year, fiscal year, etc.) and when and where the annual report will be posted to ensure that it is accessible by the public.

**Considerations for the Medical Aid-in-Dying Reporting Form:**

The current reporting form which was drafted July 1, 2021 and distributed with the Emergency Order needs considerable revisions to align it with the new regulations in both substance and format. We have a number of specific recommendations for improvement that will yield greater clarity for providers and better data for all of us. Rather than enumerate them here, we

would very much appreciate the opportunity to work directly with the NMDOH Vital Records staff to ensure the Medical Aid-in-Dying Reporting Form is clear and accomplishes what it is intended to do under the Act.

Thanks so much for the opportunity to provide these written comments. EOLONM intends to be represented at the hearing on Sept. 20<sup>th</sup> by Board Member and legislative champion former Representative, Debbie Armstrong and by Rob Schwartz our EOLONM Legal Policy Advisor who helped draft the Act.

Sincerely,

A handwritten signature in black ink that reads "Barak Wolff". The signature is written in a cursive, slightly slanted style.

Barak Wolff, Chair  
End of Life Options NM Board of Directors