

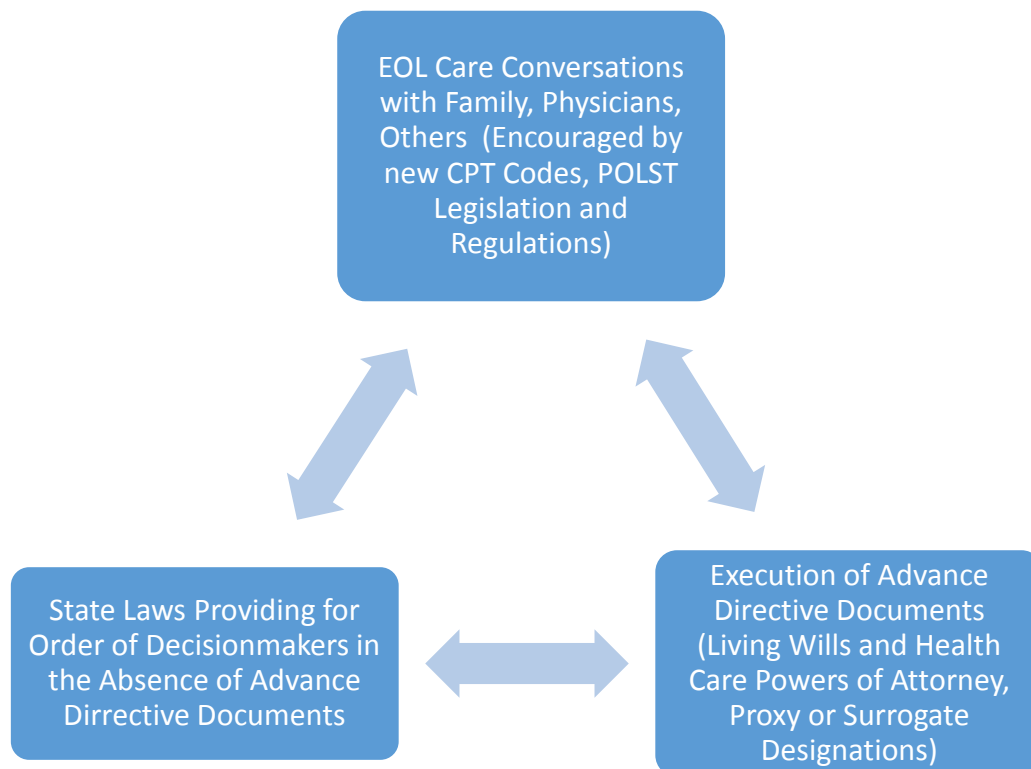
End-Of-Life (EOL) Care and the Law

The Law of Withholding and Withdrawal of Treatment:

- Every state statutorily authorizes patients' execution of advance directives:
 - Instruction directives, *i.e.*, living wills.
 - Proxy directives *i.e.*, proxy or surrogate designations, health care powers of attorney.
 - Not DNRs; those are not patient directives but are doctors' orders or at best, doctors' orders with patient or surrogate signatures indicating agreement.
- Thirty-eight states have statutes specifying surrogate decisionmakers to be consulted if a patient has not designated one in advance.

POLST (aka POST, MOST, MOLST, COLST):

- 30 states authorize physicians or other health care providers (*e.g.*, nurse-practitioners) to complete Physician Orders for Life-Sustaining Treatment (or similarly named sets of physician orders).
- Concept: during conversations, the orders are memorialized in the charts before any emergency circumstance, thus operationalizing advance directives.
- They also "travel with the patient" and are honored at all institutions in the state.

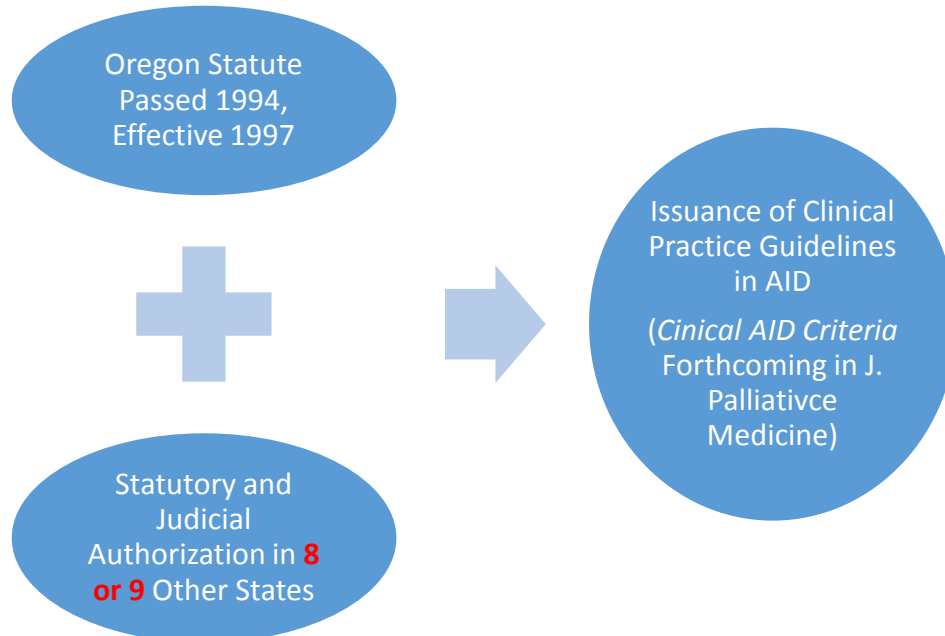


One Choice -- Hospice and Palliative Care:

- Palliative Care: “the interdisciplinary specialty focused on improving quality of life for persons with serious illness and their families” (Kelley et al.).
- Hospice: “a subpart of the larger medical field of palliative care,” providing interdisciplinary care in a team-based approach (Cerminara 2010).
- Medicare patients and most others must renounce payment for curative treatment for the terminal illness in return for payment of hospice care (Perez & Cerminara 2010),
- [Medicare Choices Model](#) demonstration projects about concurrent care (aka “open access” hospice) currently proceeding.

A Very Different Choice -- Aid in Dying (AID):

- “[T]he practice of a physician writing a prescription for medication for a mentally competent, terminally ill patient that the patient may ingest to bring about a peaceful death” (Tucker 2012).
- No national constitutional right to AID, but a state may authorize within its borders.
- Three **or four** states specifically statutorily authorize (CA, OR, VT, WA).
- Court cases pending in three states (CA, NM, NY).
- Statutes do not prohibit in two states (MT, HI).



Sources:

- A Meisel et al., *The Right to Die: The Law of End-of-Life Decisionmaking* (3d ed. 2004 & annual supps. to present).
- A.M. Perez & K.L., *La Caja de Pandora: Improving Access to Hospice Care Among Hispanic and African-American Patients*, *Houston J. Health L. & Policy* 10:255-308 (2010).
- A.S. Kelley et al., *Palliative Care for the Seriously Ill*, *N. Eng. J. Med.* 373: 747-55 (2015).
- Institute of Medicine, [Dying in America: Improving Quality and Honoring Individual Preferences Near the End of Life](#) (2015).
- K.L. Cerminara, *Pandora’s Dismay: Eliminating Coverage-Related Barriers to Hospice Care*, *Fla. Coastal L. Rev.* 11: 107-54 (2010).
- K.L. Tucker, *Aid in Dying: Guidance for an Emerging End-of-Life Practice*, *CHEST* 142(1): 218-24 (2012).