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## MEMORANDUM

**TO:** Lance Wright and Mercedes Aponte  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** December 4, 2015  
**SUBJECT:** Proposed initiative measure 2015-2016 #59, concerning Medical Aid in Dying

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Earlier versions of this proposed initiative, proposed initiative 2015-2016 #34 and proposed initiative 2015-2016 #39, were the subject of memoranda dated August 17, 2015, and September 11, 2015, which were discussed at public meetings on August 20, 2015, and September 17, 2015, respectively. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and

questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To add a new section 28a to Article II of the state constitution proclaiming that all mentally competent adults in Colorado:
  - a. Are responsible for the management of personal medical decisions;
  - b. Are "citizen-sovereigns" that have the inalienable right of the liberty at life's end to set the time and tone of their own deaths;
  - c. Are not required to obtain permission from any person, governmental body, or religious organization to exercise their rights; and
  - d. Own a residue of individual rights and liberties that have never been and are never to be surrendered to the state and are recognized, protected, and secured from infringement or diminution by any person or department of government.
2. To specify that a person or group that assists a citizen-sovereign to secure medical aid in dying is immune from criminal prosecution and civil liability upon presenting acceptable documentation demonstrating that the request for and provision of medical aid in dying was voluntary on the part of all involved.
3. To specify that a citizen-sovereign's right to obtain medical aid in dying endures, regardless of whether the citizen-sovereign becomes mentally incompetent, if that is the citizen-sovereign's desire as expressed in acceptable documentation.
4. To permit a citizen-sovereign, acting voluntarily, to make arrangements by contract to receive what is referred to as "conditional medical aid in dying", by which a citizen-sovereign can establish conditions that, if met, would trigger receiving medical aid in dying at a future date, even if the citizen-sovereign is no longer mentally competent, and to permit any adult party to the contract to withdraw agreement to participate at any time.
5. To define terms used in the measure.

6. To specify that the measure, as written, is complete but that legislation to clarify the definition of documentation is permissible as long as the legislation is limited to that necessary to fulfill the intent of the measure.
7. To require the General Assembly to complete its work so that the measure can become effective on June 15, 2017.
8. To make findings regarding the inability of Coloradans, under current law, to determine the time and tone of their deaths.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
3. In subsection (1)(b)(II) and subsection (3)(d), the term "medical procedure" is used. Prior versions of the proposal referred to "administration of oral or intravenous drugs", but it appears that terminology has been replaced with "medical procedure".
  - a. What is meant by the term "medical procedure"? Would it include surgical procedures? The term appears to be broader than "administration of oral or intravenous drugs". Is that the intent?
  - b. Would the proponents consider adding a definition of "medical procedure" in the definitions subsection of the measure?
4. With the exception of being defined in subsection (3) of the measure, the term "medical professional" appears only in the "Findings" subsection of the measure. The Findings suggest that a medical professional is involved in providing medical aid in dying, but in the substantive provisions of the measure, there is no mention of a medical professional being involved in providing medical aid in dying. While medical aid in dying is defined to "refer solely to the application of medical procedures", there is no reference to medical professionals being involved.

- a. Is the intent that a medical professional be involved in providing medical aid in dying? Is a medical professional to apply the medical procedures? Would the proponents consider clarifying the role of a medical professional in providing medical aid in dying?
  - b. The measure does not state that a medical professional may provide medical aid in dying; rather, it only states that if a "person or group" assists a citizen-sovereign in obtaining medical aid in dying, that person or group is immune from liability upon presenting acceptable documentation. Would the proponents consider including language to specifically authorize a medical professional (or person or group) to assist a person in obtaining medical aid in dying?
5. Subsection (2) is labeled as "Declarations", but that heading does not seem to be an accurate description of subsection (2). The entire subsection seems more to be setting forth the right to medical aid in dying, who may participate, immunity from liability for participating in medical aid in dying, and conditional medical aid in dying. Would the proponents consider relabeling subsection (2) to better reflect its contents, possibly something like "Right to medical aid in dying"?
6. In paragraph (a) of subsection (2), the measure declares that a citizen-sovereign is responsible for managing his or her personal medical decisions and has the right to set the time and tone of his or her death. However, that provision does not clearly and affirmatively state that a citizen-sovereign is authorized to obtain medical aid in dying. Assuming that is the intent of the proposal, would the proponents consider adding specific language in subsection (2)(a) that clearly states that a citizen-sovereign is authorized to obtain medical aid in dying?
7. The last sentence in subsection (2) (a), that starts "Each of these citizen-sovereigns ..." appears to be new language that was not included in previous proposals.
  - a. The phrase "of the United States" is redundant since citizen-sovereign is defined in subsection (3)(e) as a citizen of the United States. Would the proponents consider deleting that phrase?
  - b. It is unclear what the intent, meaning, and purpose of this sentence is. The language seems vague, overly broad, and lacks any reference to specific rights, such as a right to obtain medical aid in dying. This sentence suggests that the measure applies to more than medical aid in

dying, possibly suggesting another subject regarding broader rights and liberties. Would the proponents please explain the intent of this sentence and consider adding more specificity in the measure regarding the meaning and purpose being conveyed?

8. In subsection (2) (b), with regard to the phrase "voluntary on the part of all involved in administering MAID", the word "administering" suggests that only the acts of those who provide medical aid in dying need to be voluntary. Do the proponents intend the documentation to also show that the acts of the person *receiving* medical aid in dying were voluntary? If so, the proponents might consider modifying that sentence to clearly indicate that the documentation must demonstrate that the person receiving medical aid was acting voluntarily. Proponents might consider adding, between "request for," and "and the rendering of" the phrase "receipt of,". Additionally, the proponents might want to add "receiving or" before the word "administering".
9. With regard to subsection (2)(c), is the intent of this provision to allow a citizen-sovereign to execute some type of acceptable documentation to express his or her intent to obtain medical aid in dying at a future time under circumstances in which the citizen-sovereign is no longer mentally competent and certain conditions specified in the documentation are met? If so, would the proponents consider clearly stating that intent in the measure?
10. In subsection (2)(c)(I):
  - a. What is meant by the phrase "arrangements can be made"? Made by whom? What are "arrangements"? Can someone other than the person obtaining medical aid in dying make the "arrangements"? Does the use of passive voice make the provision ambiguous? Would the proponents consider using active voice and specifying who may make arrangements, and what the arrangements would be?
  - b. With regard to the clause that reads "At any point in time while an adult is still mentally competent and functioning as a citizen-sovereign", it seems that some of this language could be rephrased to avoid confusion since the term "citizen-sovereign" is defined as a mentally competent adult U.S. citizen. If the intent is to allow a citizen-sovereign to make a plan, as demonstrated through acceptable documentation, to obtain medical aid in dying at some time in the future, if predetermined conditions are met, it seems that the language could be simplified by using the defined terms. For example, "At any point in time, a citizen-

sovereign may make arrangements to receive MAID at some future date when predetermined conditions are met, even though the citizen-sovereign would, at that point, no longer be mentally competent."

- c. Is conditional medical aid in dying limited to persons who are no longer mentally competent? A prior proposal specifically stated that conditional medical aid in dying "can only be provided to an individual who is no longer competent", but that specific restriction does not appear in the current proposal. If the intent is to limit conditional medical aid in dying to those individuals who are no longer mentally competent (and who have made the appropriate arrangements while mentally competent), would the proponents consider adding clear language to the proposal to indicate that intent?
- d. If the proponents do not intend to limit conditional medical aid in dying to individuals who are no longer mentally competent, the proponents may wish to change the word "would" to "may" so the last line in subsection (2)(c)(I) would read "citizen-sovereign may, at that point, no longer be mentally competent."
- e. What is meant by the phrase "at that point" in the last line of subsection (2)(c)(I)? Is it the "point" when a citizen-sovereign makes arrangements to obtain medical aid in dying at a future date, or is it intended to refer to the future date when the conditions are met and the person would receive medical aid in dying? The phrase "at that point" is ambiguous and confusing. Would the proponents consider using more specific language to indicate the point in time to which that portion of the sentence is referring?

11. In subsection (2)(c)(II):

- a. The use of the word "Such" may make the provision ambiguous. Do the proponents intend the phrase "Such medical aid in dying" to refer to the medical aid in dying specified in paragraph (c) of subsection (2) of the section? If so, it would be clearer and would avoid ambiguity if the measure states that specifically.
- b. At the end of the sentence, the word "contract" is used for the first time in the context of conditional medical aid. In the previous subparagraphs, the term "acceptable documentation" is used. The term "contract", as defined in *Black's Law Dictionary*, means "an agreement between two or more persons which creates an obligation to do or not to do a particular

thing." Do the proponents intend that the citizen-sovereign has to enter into a formal agreement with another person that obligates the other person to provide medical aid in dying if the conditions are met? If that is not the intent, would the proponents consider rewording that sentence to eliminate the word "contract"?

- c. If the proponents intend to require a contract, is the intent that a contract be the "arrangements" referred to in subparagraph (I)? If so, would the proponents consider rephrasing subparagraph (I) to specify that a citizen-sovereign may enter into a contract by which the citizen-sovereign may set forth the conditions under which the citizen-sovereign may receive conditional medical aid in dying at a future time?
- d. If the proponents rephrase the first sentence of subparagraph (I), as suggested in 10.b., above, is the second sentence of subparagraph (II), which starts "The specifications in the CMAID contract...", necessary? What is the intent of this sentence?

12. In subsection (2)(c)(III):

- a. The word "contractually" is used. Similar to the question raised in 11.b., above, do the proponents intend that a citizen-sovereign enter into a contract with another person by which that other person agrees to provide medical aid in dying when the conditions are met?
- b. By what means may a person who is "contractually involved" withdraw his or her agreement to participate? If there is a written contract, does withdrawal from the contract need to occur in writing? Must withdrawal occur before the conditions are met?
- c. Reference to "MAID" under paragraph (c) and subparagraphs (I) through (III), which refer to and describe conditional medical aid in dying seems inappropriate and confusing. Would the proponents consider removing the reference to MAID in subparagraph (III)? The proponents might consider adding a new paragraph (d) to address the issue of voluntary participation in and ability to withdraw from participating in medical aid in dying.

13. In subsection (3):

- a. The definition of "acceptable documentation" specifies that the documentation is in support of the claim that the citizen-sovereign voluntarily requested medical aid in dying. However, in subsection (2)

(b) of the measure, that provision refers to "acceptable documentation supporting the claim that the request for, and the rendering of MAID, is voluntary on the part of all involved ..." So, the defined term is limited to the person receiving medical aid in dying, but the term, as used in subsection (2)(b), is broader and applies to those receiving, as well as those providing, medical aid in dying. Would the proponents consider making the definition consistent with the way in which the term is used in the measure, i.e., documentation that shows that all persons participating are acting voluntarily?

- b. In the definition of "medical aid in dying", does the phrase "refers solely to the application of medical procedures" mean that a person who provides assistance to another person in dying but does not actually perform a medical procedure is not providing medical aid in dying? For example, if a person's spouse helps the person by placing medication in the person's mouth and tipping a glass of water into the person's mouth to allow him or her to consume the medication, is that person not providing medical aid in dying? And if not, could that person be subject to criminal or civil liability for assisting the person in dying since the person did not perform a medical procedure?
- c. The word "It", as used in the definition, is ambiguous. Assuming "it" refers to "medical aid in dying", would the proponents consider using the specific term rather than the ambiguous pronoun?
- d. The definition of "citizen-sovereign" appears to now require that the person be a citizen of the United States in order to avail himself or herself of the rights and liberties under the section. Do the proponents intend to exclude persons who are not U.S. citizens from receiving medical aid in dying?

14. What will be the effective date of the proposed initiative?

15. With regard to subsection (5):

- a. Although the subsection is labeled as "Effective date", it contains a requirement imposed on the General Assembly to "complete its work." An effective date clause should contain only the effective date, unless the effective date is contingent on something occurring or not occurring. As written, it does not appear that the effective date of the measure is actually contingent on the General Assembly completing its work, so it



would be clearer to just state the effective date of the measure. For example, "This section is effective June 15, 2017."

- b. What is the "work" that the General Assembly is to complete? Is "work" intended to mean the legislation referred to in subsection (4)? If so, it may be clearer to strike that language in subsection (5) and add language to subsection (4) to specify when the general assembly is to enact legislation.
- c. Given that subsection (4) states that the amendment is "complete as written" and that "Legislation may be enacted", it seems that the general assembly is not actually required to enact legislation, so it is unclear why the measure's effective date seems to be tied to the general assembly completing its work. What happens if the general assembly does not "complete its work"? Would the measure then not take effect?

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Each constitutional and statutory section being amended, repealed, or added must be preceded by a separate amending clause explaining how the law is being changed. *See the example in technical question 2 for the correct format.*
2. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

**SECTION 1.** In the constitution of the state of Colorado, **add** section 28a to article II as follows:

3. The beginning of each section of the Colorado constitution is labeled with a specific, unique section number, which appears in bold-face type. Additionally, after the constitution section number, each section has a headnote that briefly describes the content of the section. The specific section number for the

measure and a headnote should be added to the beginning of the substantive language of the measure as follows:

**Section 28a. Medical aid in dying.** (1) **Findings.** (a) Recent advances . . .

4. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado constitution, so everything in the new section should appear in SMALL CAPITAL LETTERS.
5. It is preferable to define acronyms in the definition section, rather than showing them in parentheses following a phrase. With regard to the use of the acronyms "MAID" and "CMAID":
  - a. Those acronyms are used throughout the proposed initiative, but they are not defined. Would the proponents consider defining MAID within the definition of "Medical aid in dying" in subsection (3) (d) as follows?

(d) "MEDICAL AID IN DYING" OR "MAID" MEANS HELPING ...
  - b. If the proponents define "MAID" in the definitions section, it is not necessary to include "(MAID)" in subsection (2) (b).
  - c. Would the proponents consider defining "CMAID" in the definitions subsection rather than referring to it in subsection (2)(c)(II)? For example:

(b) "CMAID" MEANS CONDITIONAL MEDICAL AID IN DYING RECEIVED AS DESCRIBED IN PARAGRAPH (C) OF SUBSECTION (2) OF THIS SECTION.
  - d. If CMAID is defined, it should be inserted alphabetically into the list of definitions and subsequent definitions should be relettered.
6. The subparagraph labels "(I)" and "(II)" in paragraph (b) of subsection (1) and subparagraphs "(I)," "(II)," and "(III)" in subsection (2)(c) of the measure are misplaced and are used improperly. Lengthy sections of the constitution are usually divided into numbered subsections, as your proposal is, and then subsections may be divided into lettered paragraphs. Further, paragraphs may be divided into subparagraphs labeled with Roman numerals, and subparagraphs may be further divided into sub-subparagraphs labeled with capital letters, For example:

**Section \_\_\_\_.** **Headnote.** (1) Subsection:

(a) Paragraph:

- (I) Subparagraph;
- (II) Subparagraph:
  - (A) Sub-subparagraph;
  - (B) Sub-subparagraph;
  - (b) Paragraph.
- (2) Subsection.

A provision can consist of an introductory clause ending with a colon, followed by a series of numbered or lettered subdivisions, each of which must be read with the introductory clause to form a complete sentence. If a subdivision consists of only one sentence, it should end with a semi-colon. The last subdivision ends with a period.

For example, each of the subdivisions in (1) below must be read together with the introductory clause to make a complete sentence:

**11-8-105. Pledge of assets.** (1) A state bank may pledge its assets to:

- (a) Enable it to act as agent for the sale of obligations of the United States;
- (b) Secure borrowed funds;

(c) Secure deposits when the depositor is required to obtain such security by the laws of the United States, by the terms of any interstate compact, by the laws of any state, or by the order of a court of competent jurisdiction;

- (d) Otherwise comply with the provisions of this code.

A provision that does not have a common introductory clause can be broken up into related subdivisions, but the first subdivision should immediately follow the number of the larger division. Each independent subdivision should end with a period.

For example, each of the subdivision in (6) below are related, but they do not have a common introductory clause, so the "(a)" immediately follows the "(6)" and each subdivision ends with a period.

**37-98-103. Annual recommendations - bill limitation - deadlines for introduction.** (6) (a) When the Colorado water conservation board submits . . . to the board by November 1, 2014.

(b) When the Colorado water conservation board submits a draft state water plan . . . to the board by November 1, 2015.

(c) When the Colorado water conservation board submits a significant amendment . . . in which the hearings are held.

So, since the language in subsections (1)(b), (1)(b)(I), and (1)(b)(II) appear to be independent, related clauses that don't have to be read together, the subparagraph "(I)" label should be moved to immediately follow the paragraph "(b)" label and the subsequent paragraphs should be relabeled "(II)" and "(III)". Similarly, the language in subsection (2)(c), (2)(c)(I), (2)(c)(II), and (2)(c)(III) should be relabeled. The section should appear as follows:

**Section 28a. Medical aid in dying.** (1) **Findings.** (a) Recent advances in medical science . . . null and void.

(b) (I) Death is inevitable and must be faced by all people.

(II) Laws that limit an individual's . . . an individual right.

(III) Both the Declaration of Independence and . . . administration of a medical procedure.

(2) **Declarations.** (a) The people of Colorado proclaim . . . government.

(b) The people of Colorado hereby further . . . administering MAID.

(c) (I) The citizen-sovereign's right to . . . acceptable documentation.

(II) At any point in time . . . mentally competent.

(III) Such Medical Aid in Dying shall be called, . . . CMAID contract.

(IV) Participation in MAID and CMAID . . . contractually involved.

7. The defined terms in subsection (3) of the measure should be listed in alphabetical order.
8. For consistency, in subsection 4, the word "acceptable" should be inserted before "documentation" in the phrase "clarify the definition of the documentation".
9. In subsections (4) and (5), the word "amendment" should be changed to "section".