3rd Draft

Initiative #145
Access to Medical Aid-in-Dying Medication

Proposition ? proposes amending the Colorado statutes to:

- allow a terminally ill individual with a prognosis of six months or less to live to request and self-administer medical aid-in-dying medication in order to voluntarily end his or her life;

- authorize a physician to prescribe medical aid-in-dying medication to a terminally ill individual under certain conditions; and

- create criminal penalties for tampering with a person's request for medical aid-in-dying medication or knowingly coercing a person with a terminal illness to request the medication.

Summary and Analysis

Proposition ? creates the "Colorado End-of-Life Options Act," which allows individuals with a terminal illness to request from their physician and self-administer medical aid-in-dying medication (medication). To be eligible to request medication, the individual must:

- be a Colorado resident aged 18 or older;
- be able to make and communicate an informed decision to health care providers;
- have a terminal illness with a prognosis of six months or less to live (terminally ill) that has been confirmed by two physicians, including the individual's primary physician and a second, consulting physician;
- be determined mentally capable by two physicians, who have concluded that the individual understands the consequences of his or her decision; and
- voluntarily express his or her wish to receive the medication.

Request process. To receive the medication, the individual must make two oral requests, at least 15 days apart, and one written request in a specific form to his or her primary physician. The written request must be witnessed by at least two other persons who attest that the requesting individual is mentally capable, acting voluntarily, and not being coerced into signing the request. One witness may not be a relative of the individual; an heir; or an owner, operator, or employee of a health care facility where the individual is receiving medical treatment or is a resident. Neither the primary physician nor the individual's qualified power of attorney or durable medical power of attorney, may be a witness to a written request.

Physician requirements. The primary physician is required to document that an individual requesting the medication is terminally ill and meets all other eligibility criteria. The primary physician must provide full and specific information to the individual about his or her diagnosis and prognosis; alternatives or additional treatment opportunities, such as hospice or palliative care; and the potential risks and probable results associated with taking the medication. The primary physician must also inform the individual that he or she may obtain, but choose not to use the medication and may withdraw his or her request at any time. The primary physician must confirm, in private with the individual, that his or her request to receive medication was not coerced or influenced by any other person and is required to refer the individual to a consulting physician to confirm that the individual meets all eligibility criteria.

If either a primary or consulting physician believes the individual is not mentally capable of making an informed decision about receiving the medication, that physician must refer the individual to a licensed mental health professional before the request process may proceed. The mental health professional must communicate his or her findings in writing to the referring physician. If a person is found to be mentally incompetent, he or she is no longer eligible for medical aid-in-dying.

Dispensing of medical aid-in-dying medication. Medication may be dispensed when two physicians agree on the individual's prognosis. Immediately prior to writing a prescription for the medication, the primary physician must verify that the individual is making an informed decision and that the process has been completed properly. Health care providers, including physicians and pharmacists, who dispense medication are required to file a copy of the dispensing record with the state. Unused medication must be returned to the primary physician or to any other state or federally approved medication take-back program.

Death certificates. The death certificate of an individual who uses the medication must be signed by the primary physician or hospice medical director and must list the underlying terminal illness as the cause of death. Deaths resulting from medical aid-in-dying are not subject to automatic investigation by the county coroner.

Voluntary participation by health care providers. Physicians and pharmacists are not obligated to prescribe or dispense the medication. If a health care provider is unable or unwilling to carry out an eligible individual's request for the medication and the individual transfers to a new provider, the initial provider is required to coordinate the transfer of medical records to the new provider. A health care facility may prohibit a physician employed or under contract with the facility from prescribing medication to an individual who intends to use the medication on the facility's premises. The facility must provide advance written notice of its policy to the physician and its patients. A health care facility may not discipline a physician, nurse, pharmacist, or other person for actions taken in good faith or for refusing to participate in any way.

Civil and criminal penalties. The measure creates a class 2 felony for tampering with a request for medication or knowingly coercing a terminally ill person to request the medication. Persons are immune from civil or criminal liability or professional disciplinary action unless they act with negligence, recklessness, or intentional misconduct.

Insurance, wills, contracts, and claims. Requesting or self-administering the medication does not affect a life, health, or accident insurance policy or an annuity, and nothing in the measure affects advance medical directives. Insurers may not issue policies with conditions about whether or not individuals may request medication.

> *For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*
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> http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Arguments For

1) Proposition ? expands the options and supports available to a terminally ill person in the last stage of life. Under the measure, a terminally ill individual may consult with a physician and benefit from medical guidance in deciding whether and how to end his or her life. The measure allows a mentally competent individual to peacefully end his or her life in the time, place, and environment of his or her choosing after voluntarily requesting and self-administering the medication. Proposition ? also provides protections from criminal penalties for physicians and family members who choose to assist a terminally ill individual through the dying process.

2) Proposition ? seeks to balance the choice of a terminally ill person to voluntarily end his or her life with the state's interest in promoting public safety. It establishes safeguards by creating criminal penalties and ensuring that an individual's physician, family members, and heirs are not the only witnesses to requests for medication. The measure protects the individual by prohibiting any other person, including a physician, from making the decision to request medical aid-in-dying or from administering the medication. Further, by requiring that at least two physicians examine the individual and document his or her prognosis and mental capabilities, the measure establishes a process to ensure that an individual is capable of making an informed decision to end his or her life.

3) Access to medical aid-in-dying may provide a sense of comfort to a terminally ill person by authorizing medication as insurance against suffering and the potential loss of dignity and autonomy. Proposition ? is similar to options available in Oregon, Washington, Vermont, Montana, and California, that respect the end of life concerns of terminally ill people. Oregon's experience shows that the majority of persons

requesting medication cited concerns about losing autonomy and dignity at the end of their lives. Once the medication is requested, it is up to the individual to decide when and if to take it. In Oregon, for example, of the 1,545 people who requested the medication since 1997, approximately one-third chose not to use it.

Arguments Against

1) Encouraging the use of lethal medication by terminally ill people sends the message that some lives are not worth living to their natural conclusion. People who are in the final stages of life are often in fear of the dying process. The availability of medical aid-in-dying may encourage people to make drastic decisions based on concerns about the potential loss of autonomy and dignity, not realizing the modern palliative and hospice care can effectively address these concerns. Services such as pain and symptom management, in-home services, emotional and spiritual counseling, and family support can help individuals navigate the end of their lives while minimizing suffering. Promoting medical aid-in-dying as an alternative to high-quality palliative and hospice care may lead to a reduced emphasis on treatment and development of new options for end-of-life care.

2) Proposition ? creates opportunities for abuse and fraud. The protections in the measure do not go far enough to shield vulnerable people, especially those who are elderly, poor, or disabled, from family members and others who may benefit from their premature death. Proposition ? allows a family member or heir to be one of the witnesses to a request for the medication and does not go far enough to ensure that the individual is free from coercion. The measure does not require that a physician have specific training in the terminal illness or mental health conditions needed to make an accurate assessment of the individual or require independent verification that the medication was taken voluntarily or under medical supervision. Finally, Proposition ? fails to ensure that the lethal medication will be monitored or stored in a safe location, potentially placing others at risk or leading to its misuse.

3) Proposition ? forces physicians to choose between medical ethics and a request to die from a person for whom they feel compassion. The measure compromises a physician's judgment by asking him or her to verify that an individual has a prognosis of six months or less to live, yet fails to recognize that diagnoses can be wrong and prognoses are estimates, not guarantees. The measure also requires that the physician or hospice director list the terminal illness or condition on the death certificate, which requires these professionals to misrepresent the cause of death.

Estimate of Fiscal Impact

State revenue and spending. Beginning in FY 2016-17, Proposition ? may increase state revenue from criminal fines by a minimal amount. The measure increases state spending by about $45,000 annually for the Department of Public Health and Environment to collect information about health care provider compliance

and prepare an annual report. To the extent that persons are tried and convicted of crimes created by the measure, workload and costs will also increase.

Local government impact. This measure may affect local governments as a result of prosecuting new criminal offenses under the measure. These impacts are anticipated to be minimal.