



**Colorado
Legislative
Council
Staff**

Proposition 106

**FISCAL IMPACT
STATEMENT**

Date: September 1, 2016

Fiscal Analyst: Kerry White, 303-866-3469

BALLOT TITLE: ACCESS TO MEDICAL AID-IN-DYING MEDICATION

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	Potential increase.	
State Expenditures	at least \$27,874	at least \$44,041
Cash Funds	19,582	29,756
Centrally Appropriated Costs	8,292	14,285
FTE Position Change	0.3 FTE	0.5 FTE

Summary of Measure

This measure creates the "Colorado End-of-Life Options Act," which allows individuals with a terminal illness to request 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 that has been confirmed by two physicians, including the individual's primary physician and a second, consulting physician; and
- voluntarily express his or her wish to receive the medication.

The measure sets forth requirements for requesting medication, witnessing requests for medication, processes for dispensing and receiving unused medication, and making referrals to a mental health professional. Physicians and pharmacists are not obligated to prescribe, dispense, or supervise the administration of the medication. Proposition 106 clarifies that self-administering medication does not affect an insurance policy, annuity, or advanced medical directive.

Liability and criminal penalties. Persons are not subject to civil or criminal liability of professional disciplinary action if they act in good faith and within the parameters of the measure. The measure does not limit civil or criminal liability for negligence, recklessness, or intentional misconduct by any person in the process. If a person uses medical aid-in-dying in a public place, a government entity may make a claim against the deceased person's estate to recover its costs. The measure creates new criminal penalties for altering or forging a medical aid-in-dying request; concealing or destroying a rescission of a request for medical aid-in-dying; or coercing or exerting undue influence to get another person to request or rescind a request for medical aid-in-dying.

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Audits of records. Health care providers that dispense medication are required to file a copy of the dispensing record with the Colorado Department of Public Health and Environment (CDPHE). The CDPHE is required to annually review a sample of records maintained by attending physicians in order to ensure compliance with the act. CDPHE is also required to compile and publish an annual statistical report of information related to dispensing records, but individual records are not available for public inspection.

State Revenue

Beginning in FY 2016-17, this measure may increase revenue by a minimal amount.

Criminal penalties. This measure may increase state cash fund revenue credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 2 felony is \$5,000 to \$1,000,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on prior convictions, any fine revenue is likely to be minimal.

Reimbursements. To the extent that individuals participating in medical aid-in-dying die in a public place, the state may receive revenue to reimburse its costs. Any increase in revenue is minimal and will be credited to the fund used to pay those costs.

State Expenditures

This measure increases state expenditures by at least \$27,874 and 0.3 FTE in FY 2016-17 and by at least \$44,041 and 0.5 FTE in FY 2017-18 and future years. These costs are shown in Table 1 and described below.

Cost Components	FY 2016-17	FY 2017-18
Personal Services	\$14,641	\$29,281
FTE	0.3 FTE	0.5 FTE
Operating Expenses and Capital Outlay Costs	4,941	475
Centrally Appropriated Costs	8,292	14,285
TOTAL	\$27,874	\$44,041

Assumptions. Consistent with data from the state of Oregon (which has a similar medical aid-in-dying process) and adjusted for population differences, this analysis assumes that between 120 to 150 persons will request medical aid-in-dying assistance each year. Because the process set out in Proposition 106 is voluntary, this analysis further assumes that state physicians, facilities, and health care programs, including Medicaid, will choose to opt out from participating in medical aid-in-dying.

Department of Public Health and Environment. The measure requires the Department of Public Health and Environment to adopt rules to collect information about health care provider compliance, collect certain medical information including dispensing records, and to prepare an annual statistic report. These activities require 0.5 FTE per year. First year costs are prorated to assume a January 1, 2017, start date. Costs include one-time capital outlay costs and ongoing operating costs.

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Department of Corrections. Costs in the Department of Corrections may increase under the measure. To the extent that persons are convicted of either class 2 felony created by the measure and that penalty is greater than what they would have been charged with otherwise, costs will increase. For informational purposes, offenders placed in a private contract prison cost the state about \$59.90 per offender per day, including the current daily rate of \$55.08 and an estimated \$3.88 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. This analysis assumes that any costs in future years arising under this measure will be addressed through the annual budget process.

Trial courts. This measure may affect trial courts within the Judicial Department to hear any criminal or civil liability cases, as well as any claims by a state or local government for damages resulting from an individual choosing to end his or her life in a public space. These workload impacts are assumed to be minimal and will not require an increase in appropriations.

Public defender costs. The measure may increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel to provide representation for any persons subject to criminal prosecution and deemed to be indigent. The fiscal note assumes any such increases will be minimal and will not require an increase in appropriations for any agency within the Judicial Department.

Other state agency costs. Certain state departments, including Corrections, Human Services, and Health Care Policy and Financing, will have rule making and other costs associated with communicating with medical providers that medical aid-in-dying is not covered under the Medicaid program or available within state facilities. The Department of Regulatory Agencies may have workload increases in order to communicate with regulated professions concerning aspects of the measure, such as the return of unused medication, and with insurance companies. To the extent that an individual participating in medical aid-in-dying ends his or her life in a public space, such as a state park, costs will increase. The workload and costs associated with these tasks is assumed to be minimal and can be accomplished within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$2,007	\$4,014
Supplemental Employee Retirement Payments	1,253	2,624
Indirect Costs	5,032	7,647
TOTAL	\$8,292	\$14,285

Local Government Impact

This measure will affect local governments in several ways. First, it may increase workload for district attorneys to prosecute any new criminal offenses under the measure. Second, training costs may be incurred for local governments that employ paramedics or other first responders. Third, similar to the state, local governments may need to incur costs to update rules and policies to communicate their intentions to participate or opt out of medical aid-in-dying at any hospitals, jails, or other facilities operated by the local government. Finally, if a person participating in medical aid-in-dying chooses to end his or her life in a public place, local governments may incur costs. To the extent that this occurs and the deceased person has assets, costs may be offset by an increase in revenue from the deceased person's estate. These impacts are assumed to be minimal.

Effective Date

The measure takes effect after the date of the official declaration of the vote by proclamation of the Governor, not later than 30 days after the votes have been canvassed.

State and Local Government Contacts

Corrections
Health Care Policy and Financing
Information Technology
Law
Regulatory Agencies

District Attorneys
Human Services
Judicial
Public Health and Environment
Sheriffs