

**FINAL  
FISCAL NOTE**

<b>Drafting Number:</b> LLS 15-0019	<b>Date:</b> July 14, 2015
<b>Prime Sponsor(s):</b> Rep. Court; Ginal Sen. Guzman	<b>Bill Status:</b> Postponed Indefinitely
	<b>Fiscal Analyst:</b> Bill Zepernick (303-866-4777)

**BILL TOPIC:** TERMINALLY ILL INDIVIDUALS END-OF-LIFE DECISIONS

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
<b>State Revenue</b>	<b>&lt;\$5,000</b>	<b>&lt;\$5,000</b>
Cash Funds	<5,000	<5,000
<b>State Expenditures</b>	<b>\$65,109</b>	<b>\$43,311</b>
Cash Funds	43,238	28,076
Centrally Appropriated Costs**	21,871	15,235
<b>TABOR Set Aside</b>	<b>&lt;\$5,000</b>	<b>&lt;\$5,000</b>
<b>FTE Position Change</b>	<b>0.7 FTE</b>	<b>0.5 FTE</b>
<b>Appropriation Required:</b> \$43,238 - Dept. of Public Health and Environment (FY 2015-16)		

\* This summary shows changes from current law under the bill for each fiscal year.

\*\* These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

**Summary of Legislation**

The bill creates the "Colorado Death with Dignity Act," which allows individuals with a terminal illness to request, and self-administer, life-ending medication from a physician under certain conditions. Specifically, for an individual to be eligible to request life-ending medication, he or she must:

- be a Colorado resident aged 18 or older;
- be capable of making and communicating health care decisions;
- have a terminal illness that has been confirmed by two physicians, including the individual's primary physician (attending physician) and a second consulting physician; and
- voluntarily express his or her wish to die.

**Waiting periods.** The bill sets forth the process by which an individual may request life-ending medication, which includes waiting periods and requirements that must be observed:

- the individual must make two oral requests and one written request for life-ending medication to the attending physician;
- the two oral requests must be at least 15 days apart;
- the physician must inform the individual of his or her ability to rescind the request after he or she makes the second oral request; and
- a prescription for life-ending medication cannot be written until at least 48 hours after the written request is received by the attending physician.

**Written requests.** The written request to a physician for life-ending medication must follow the form specified in statute and must be signed and dated by the requesting individual. In addition, the form must be witnessed by at least two other persons who attest in the presence of the requesting individual that he or she is capable, acting voluntarily, and not being coerced into signing. Of the two witnesses, at least one cannot be a relative of the individual; a person who would be entitled to any portion of the individual's estate upon his or her death; or an owner, operator, or employee of a health care facility where the requesting individual is receiving treatment or is a resident. Further, neither the attending physician nor the consulting physician can act as a witness.

**Physician requirements.** The bill sets forth the requirements for the attending physician, including disclosures and recommendations that must be made by the physician to the requesting individual, the requirement to refer an individual to counseling under certain conditions, documentation requirements, and the process for issuing and filling prescriptions for life-ending medication.

**Data tracking and enforcement.** Health care providers are required to document information about a requesting individual's terminal illness, oral and written requests for life-ending medication, and other information in the individual's medical record. The bill tasks the Department of Public Health and Environment (DPHE) with monitoring compliance and establishing rules for the collection of necessary information and records. The DPHE is required to create an annual statistical report on the information it collects.

**Criminal penalties.** The bill creates two new class 2 felonies for the following offenses:

- willfully altering or forging a request for life-ending medication, or destroying or concealing a rescission of a request for life-ending medication, with the intent of causing the death of a person with a terminal illness; and
- coercing or exerting undue influence on a person with a terminal illness to request life-ending medication.

**Limits on liability.** Physicians participating in the process of prescribing life-ending medication are not subject to civil or criminal liability or professional disciplinary action if they act within the parameters of the bill. The bill does not limit civil liability for damages for negligent or intentional misconduct by any person in the process.

**Opt-out provisions.** Physicians and pharmacists are not obligated to prescribe or dispense life-ending medication. A health care provider may prohibit other providers on the premises from prescribing or dispensing life-ending medication. Notification of such a prohibition must be provided in writing. A health care provider who violates a prohibition in effect on the premises of another health care provider may be subject to sanction, including loss of medical staff privileges or the termination of a lease or contract.

## **Background**

The state of Oregon passed a similar "Death with Dignity Act" through the citizen initiative process in 1994, which took effect in 1997. For reference, in 1998, the first year that individuals in Oregon with a terminal illness could request and use life-ending medication from a physician, 24 individuals made a request for, and 16 individuals used, the medication. These figures have increased steadily over the years, and in 2013, 122 individuals requested, and 71 individuals used, life-ending medication prescribed by a physician.

### **State Revenue**

Beginning in FY 2015-16, this bill is anticipated to increase state revenue by less than \$5,000 per year, 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, the fiscal note assumes that charges and convictions for these offenses will be rare. Also, based on the low number of fines imposed in 2014, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

### **TABOR Impact**

This bill may increase state revenue from fines, which could increase the amount required to be refunded under TABOR.

### **State Expenditures**

The bill increases costs in the DPHE by **\$65,109 and 0.7 FTE in FY 2015-16** and by **\$43,311 and 0.5 FTE in FY 2016-17** and future years. These costs are paid from the Vital Statistics Records Cash Fund. The costs in the DPHE are summarized in Table 1 and discussed below. Other state agencies that may be affected by the bill are also highlighted.

**Assumptions.** Based on data from Oregon, the fiscal note makes the following assumptions:

- approximately 50 to 100 individuals with a terminal illness will request, and about 60 percent of these individuals will use, life-ending medication in the first year;
- the number of individuals requesting and using life-ending medication will increase gradually in future years;
- health care providers participating in the process created by the bill will have a high level of compliance with the bill's requirements; and
- no one will be charged or convicted of the two felony offenses created by the bill over the next five years.

<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
Personal Services	\$37,870	\$27,601
FTE	0.7 FTE	0.5 FTE
Operating Expenses and Capital Outlay Costs	5,368	475
Centrally Appropriated Costs*	21,871	15,235
<b>TOTAL</b>	<b>\$65,109</b>	<b>\$43,311</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Department of Public Health and Environment.** The DPHE requires 0.5 FTE per year beginning in FY 2015-16 for a statistical analyst to manage the collection and processing of data and records, monitor compliance, respond to public requests for information, and conduct other necessary activities under the bill. An additional 0.2 FTE is also required in the first year for staff to develop forms and guidelines concerning the process created by the bill. These personal services costs, as well as standard operating and capital outlay expenses, are shown in Table 1.

**Department of Regulatory Agencies.** The Department of Regulatory Agencies (DORA) may have a minimal increase in workload under the bill. The State Board of Medical Examiners may receive a small number of complaints regarding physicians' conduct from the members of the public, health care providers, or the DPHE concerning practices under the bill. Based on the experience in Oregon, the number of such cases is expected to be small and likely to involve minor technical issues concerning forms and documentation, especially during the initial years. DORA can address any such complaints, investigations, and hearings within existing resources and no change in appropriation is required.

**Department of Corrections.** Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. This bill creates two class 2 felony offenses, but exempts itself from the requirement to cover the five-year cost of the bill. This provision of the bill withstanding, the fiscal note does not project any convictions to occur in the next five years for the offenses created in the bill. This estimate is based on the experience in Oregon which has had no charges or convictions under the equivalent offenses in its state law. Therefore, the bill is not expected to have a fiscal impact on the Department of Corrections. Should any offenders be convicted and sentenced to the custody of the Department of Corrections, it is assumed these costs can be addressed through the annual budget process. For informational purposes only, the average length of stay for a class 2 felony is 217.8 months and in FY 2015-16, the cost to house an inmate for one year is \$22,068.

**Judicial Department.** Workload may also increase in the Judicial Department to hear any cases are brought regarding the new offenses created by the bill. However, as stated above, such cases are expected to be rare and the trial court impact is assumed to be minimal. Similarly, the bill 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 deemed to be indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

**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.

<b>Table 2. Centrally Appropriated Costs Under HB 15-1135*</b>		
<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,624	\$4,018
Supplemental Employee Retirement Payments	2,935	2,362
Indirect Costs	13,312	8,855
<b>TOTAL</b>	<b>\$21,871</b>	<b>\$15,235</b>

\*More information is available at: <http://colorado.gov/fiscalnotes>

### **Comparable Crime**

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. The bill creates two new class 2 felony offenses relating to requesting life-ending medication for persons with a terminal illness. Given that there is not currently such a process concerning life-ending medication in Colorado, no directly comparable crime exists in state law. However, a person who uses the process created by the bill to obtain life-ending medication to cause the death another person who does not voluntarily participate in the process could be charged with murder in the first or second degree (class 1 or class 2 felony). Also, any person who actively injects or administers the life-ending medication can be charged with manslaughter (class 4 felony) for assisting a person to commit suicide.

### **Effective Date**

The bill was postponed indefinitely by the House Public Health Care and Human Services Committee on February 6, 2015.

### **State Appropriations**

For FY 2015-16, the bill requires an appropriation of \$43,238 to the Department of Public Health and Environment from the Vital Records Statistics Cash Fund, and an allocation of 0.7 FTE.

### **State and Local Government Contacts**

Corrections	Health Care Policy and Financing
Human Services	Judicial
Law	Public Health and Environment
Regulatory Agencies	Counties
District Attorneys	Sheriffs