

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

1 **Proposition ? proposes amending the Colorado statutes to:**

- 2 ♦ allow a terminally ill individual with a prognosis of six months or less to
3 live to request and self-administer medical aid-in-dying medication in
4 order to voluntarily end his or her life;
- 5 ♦ authorize a physician to prescribe medical aid-in-dying medication to a
6 terminally ill individual under certain conditions; and
- 7 ♦ create criminal penalties for tampering with a person's request for
8 medical aid-in-dying medication or knowingly coercing a person with a
9 terminal illness to request the medication.

10 **Summary and Analysis**

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

- 14 • be a Colorado resident aged 18 or older;
15 • be able to make and communicate an informed decision to health care
16 providers;
17 • have a terminal illness with a prognosis of six months or less to live that
18 has been confirmed by two physicians, including the individual's primary
19 physician and a second, consulting physician; and
20 • voluntarily express his or her wish to receive the medication.

21 **Request process.** To receive the medication, the individual must make two oral
22 requests, at least 15 days apart, and one written request in a specific form to his or
23 her primary physician. The written request must be witnessed by at least two other
24 persons who attest that the requesting individual is mentally capable, acting
25 voluntarily, and not being coerced into signing the request. One witness may not be a
26 relative of the individual; an heir; or an owner, operator, or employee of a health care
27 facility where the individual is receiving medical treatment or is a resident. The
28 primary physician or the individual's qualified power of attorney or durable medical
29 power of attorney, may not be a witness to a written request.

30 **Physician requirements.** A primary physician is required to document that an
31 individual requesting the medication has a terminal illness with a prognosis of
32 six months or less to live and meets all other eligibility criteria. The primary physician
33 must provide full and specific information about the individual's diagnosis and
34 prognosis; alternatives or additional treatment opportunities, such as hospice or
35 palliative care; and the potential risks and probable results associated with taking the

1 medication. The primary physician must also inform the individual that he or she may
2 obtain, but choose not to use the medication or withdraw his or her request at any
3 time. The primary physician must confirm, in private with the individual, that his or her
4 request to receive medication was not coerced or influenced by any other person.
5 The primary physician is required to refer the individual to a consulting physician to
6 confirm that the individual meets all eligibility criteria.

7 If a primary or consulting physician believes the individual is not mentally capable
8 of making an informed decision about receiving the medication, either physician must
9 refer the individual to a licensed mental health professional. The mental health
10 professional must communicate his or her findings in writing to the requesting
11 physician.

12 **Dispensing of medical aid-in-dying medication.** Medication may only be
13 dispensed when two physicians agree on the individual's prognosis. The medication
14 may not be dispensed if a licensed mental health professional determines that a
15 requesting individual is not mentally capable of making an informed decision.
16 Immediately prior to writing a prescription for the medication, the primary physician
17 must verify that the individual is making an informed decision and that the process has
18 been completed properly. Health care providers, including physicians and
19 pharmacists, who dispense medication are required to file a copy of the dispensing
20 record with the state. Unused medication must be returned to the primary physician or
21 to any other state or federally approved medication take-back program.

22 **Death certificates.** The death certificate of an individual who uses the medication
23 must be signed by the primary physician or hospice medical director and must list the
24 underlying terminal illness as the cause of death. Deaths certified under the measure
25 are not reportable to the county coroner.

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

36 **Civil and criminal penalties.** The measure creates a class 2 felony for tampering
37 with a person's request for medication or knowingly coercing a person with a terminal
38 illness to request the medication. Persons are immune from civil or criminal liability or
39 professional disciplinary action unless they act with negligence, recklessness, or
40 intentional misconduct.

1 **Insurance, wills, contracts, and claims.** Self-administering the medication does
2 not affect a life, health, or accident insurance policy or an annuity and nothing in the
3 measure affects advance medical directives. Insurers may not issue policies with
4 conditions about whether individuals 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:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

5 **Arguments For**

6 1) Medical aid-in-dying allows a terminally ill person to avoid extended physical
7 and emotional pain or desperate actions to expedite death, such as suicide or refusing
8 nutrition. Proposition ? allows a dying individual to benefit from medical guidance
9 during the decision-making process without requiring a physician to administer the
10 medication. The practice of medical aid-in-dying is consistent with other end-of-life
11 options that hasten death, including do not resuscitate orders, or the withdrawal of
12 life-sustaining measures at an individual's request.

13 2) Proposition ? balances the state's interest in public safety with a dying
14 individual's desire to exert a degree of control over his or her last stage of life. It
15 establishes safeguards by creating relevant criminal penalties and ensuring that an
16 individual's health care providers, family members, and heirs are not the only
17 witnesses to requests for medication. Further, by requiring that multiple physicians
18 examine the individual and document his or her prognosis and mental capabilities, the
19 measure establishes a thorough process to ensure that an individual is competent to
20 make the decision to end his or her life.

21 **Arguments Against**

22 1) Laws against assisted suicide are in place to prevent the abuse of vulnerable
23 populations and to protect the public. The protections in this proposition do not go far
24 enough to shield vulnerable people, especially those who are elderly, poor, or
25 disabled, from family members and others who may benefit from their premature
26 death. Proposition ? allows a family member or heir to be one of the witnesses to a
27 request for the medication and does not go far enough to ensure that the individual is
28 free from coercion. The measure does not require independent verification that the
29 medication was taken voluntarily. It also does not require unused lethal medication to
30 be kept under lock and key, potentially placing others at risk.

1 2) Medical aid-in-dying diminishes the value of life by suggesting that some lives
2 are not worth living. Permitting its practice may lead to reduced emphasis on treating
3 terminally ill individuals or from developing new options to provide care and pain relief
4 to an individual at the end of his or her life. Additionally, physicians are forced to
5 choose between medical ethics and a request to die from a person for whom they feel
6 compassion. The measure compromises a physician's judgment by asking him or her
7 to verify that an individual has a prognosis of six months or less to live, yet fails to
8 recognize that diagnoses can be wrong and prognoses are estimates, not guarantees.
9 The measure also requires that the physician or hospice director list the terminal
10 illness or condition on the death certificate, which requires these professionals to
11 misrepresent the cause of death.

12 **Estimate of Fiscal Impact**

13 *(Please Note: A summary of the fiscal impact will be included in this space in the*
14 *second draft of the analysis, and an official fiscal note will be prepared and placed on*
15 *the web when the final blue book is sent to voters.)*