

Proposition 106 Access to Medical Aid-in-Dying Medication

1 **Proposition 106 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 106 creates the "Colorado End-of-Life Options Act," which allows
12 individuals with a terminal illness to request from their physician and self-administer
13 medical aid-in-dying medication (medication). To be eligible to request medication,
14 the individual must:

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

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

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

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

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

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

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

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

6 **Insurance, wills, contracts, and claims.** Requesting or self-administering the
7 medication does not affect a life, health, or accident insurance policy or an annuity,
8 and nothing in the measure affects advance medical directives. Insurers may not
9 issue policies with conditions about whether or not individuals may request
10 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>

11 **Arguments For**

12 1) Proposition 106 expands the options and supports available to a terminally ill
13 person in the last stage of life. Under the measure, a terminally ill individual may
14 consult with a physician and benefit from medical guidance in deciding whether and
15 how to end his or her life. The measure allows a mentally competent individual to
16 peacefully end his or her life in the time, place, and environment of his or her choosing
17 after voluntarily requesting and self-administering the medication. Proposition 106
18 also provides protections from criminal penalties for physicians and family members
19 who choose to support a terminally ill individual through the dying process.

20 2) Proposition 106 seeks to balance the choice of a terminally ill person to
21 voluntarily end his or her life with the state's interest in promoting public safety. It
22 establishes safeguards by creating criminal penalties and ensuring that an individual's
23 physician, family members, and heirs are not the only witnesses to requests for
24 medication. The measure protects the individual by prohibiting any other person,
25 including a physician, from making the decision to request medical aid-in-dying or
26 from administering the medication. Further, by requiring that at least two physicians
27 examine the individual and document his or her prognosis and mental capabilities, the
28 measure establishes a process to ensure that an individual is capable of making an
29 informed decision to end his or her life.

30 3) Access to medical aid-in-dying may provide a sense of comfort to a terminally ill
31 person by authorizing medication as insurance against suffering and the potential loss
32 of dignity and autonomy. Proposition 106 is similar to options available in Oregon,
33 Washington, Vermont, Montana, and California, that respect the end-of-life concerns
34 of terminally ill people. Oregon's experience shows that the majority of persons

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

5 **Arguments Against**

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

16 2) Proposition 106 creates opportunities for abuse and fraud. The protections in
17 the measure do not go far enough to shield vulnerable people from family members
18 and others who may benefit from their premature death. Proposition 106 allows a
19 family member or heir to be one of the witnesses to a request for the medication,
20 potentially subjecting the individual to coercion. The measure does not require that a
21 physician have any specific training in order to make an assessment of the individual
22 or require independent verification that the medication was taken voluntarily or under
23 medical supervision. Proposition 106 fails to ensure that the lethal medication will be
24 stored in a safe location, potentially placing others at risk or leading to its misuse.

25 3) Proposition 106 may force physicians to choose between medical ethics and a
26 request to die from a person for whom they feel compassion. The measure
27 compromises a physician's judgment by asking him or her to verify that an individual
28 has a prognosis of six months or less to live, yet fails to recognize that diagnoses can
29 be wrong and prognoses are estimates, not guarantees. The measure also requires
30 that the physician or hospice director list the terminal illness or condition on the death
31 certificate, which requires these professionals to misrepresent the cause of death.

32 **Estimate of Fiscal Impact**

33 **State revenue and spending.** Beginning in FY 2016-17, Proposition 106 may
34 increase state revenue from criminal fines by a minimal amount. The measure
35 increases state spending by about \$45,000 annually for the Department of Public
36 Health and Environment to collect information about health care provider compliance
37 and prepare an annual report. To the extent that persons are tried and convicted of
38 crimes created by the measure, workload and costs will also increase.
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Blue Book

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