



**Colorado
Legislative
Council
Staff**

HB16-1054

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0001
Prime Sponsor(s): Rep. Court; Ginal
 Sen. Merrifield

Date: January 21, 2016
Bill Status: House Judiciary
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BILL TOPIC: END-OF-LIFE OPTIONS FOR TERMINALLY ILL INDIVIDUALS

| Fiscal Impact Summary | FY 2016-2017 | FY 2017-2018 |
|---|----------------------------|--------------------|
| State Revenue | <u><\$5,000</u> | <u><\$5,000</u> |
| Cash Funds | <5,000 | <5,000 |
| State Expenditures | Minimal workload increase. | |
| TABOR Impact | <\$5,000 | <\$5,000 |
| FTE Position Change | | |
| Appropriation Required: None. | | |
| Future Year Impacts: Ongoing potential state revenue increase and minimal workload increase. | | |

Summary of Legislation

The bill creates the "Colorado End-of-life Options 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 receive life-ending medication.

Request process. The bill sets forth the process by which an individual may request life-ending medication, which includes waiting periods and other 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 made at least 15 days apart.

The written request 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, the attending physician cannot 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;
- referring the individual to a second, consulting physician to confirm the diagnosis of a terminal illness;
- referring an individual to mental health counseling under certain conditions;
- documentation requirements; and
- the process for issuing and filling prescriptions for life-ending medication.

The consulting physician must confirm in writing to the attending physician the individual's prognosis and capability of making an informed decision concerning the request for life-ending medication.

Death certificate and procedures. The attending physician is allowed to sign the death certificate for a qualified individual who obtains and self-administers life-ending medication. The underlying terminal illness is required to be listed as the cause of death. Deaths certified under the bill are not reportable to, and not grounds for a post-mortem inquiry by, the county coroner.

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 facility may prohibit providers on its 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 a health care facility may be subject to sanction, including loss of medical staff privileges or the termination of a lease or contract.

Background

Oregon was the first state to pass a law allowing patients to request life-ending medication, which was enacted through the citizen initiative process in 1994 and took effect in 1997. Washington state also enacted a similar law in 2009, followed by Vermont in 2013, and California in 2015. For reference, 24 individuals in Oregon requested life-ending medication in 1998, the first year such an option was available, of which 16 individuals used the medication. The number of requesting individuals has increased steadily over the years to 155 persons as of 2014, 105 of whom used the medication. Washington state shows a similar increase since its law passed, with 65 requesting individuals in 2009, of whom 36 used the medication. This figure has increased to 176 requesting individuals in 2014, of whom 126 used the medication.

Assumptions

Based on data from Oregon and Washington, 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.

State Revenue

Beginning in FY 2016-17, this bill potentially increases 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 convictions will be rare under the bill. If a conviction does occur, based on the low number of fines imposed in 2015, any revenue generated is likely to be less than \$5,000.

TABOR Impact

This bill may increase state cash fund revenue from fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

State Expenditures

The bill increases workload for several state agencies, as discussed below. However, no additional appropriations are required under the bill.

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 other sources 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 Public Health and Environment. The Department of Public Health and Environment (DPHE) will have increased workload under the bill to distribute patient and physician forms, disseminate information about the process created by the bill, and respond to information requests from the public. However, the bill does not task the DPHE with any specific data collection or reporting duties and it does not have oversight responsibilities. Therefore, the workload impact is assumed to be minimal and can be accomplished within existing appropriations.

Judicial Department. Workload may also increase in the Judicial Department to hear any cases are brought regarding the new felony 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 any increases in appropriations within the Judicial Department will be addressed through the annual budget process, if 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. While this bill creates two class 2 felony offenses, 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 for 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 2016-17, the cost to house an inmate for one year is \$21,864.

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, 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. There were two persons convicted for this crime over the

last three years (both white males). Further, 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 potentially be charged with murder in the first or second degree (class 1 or class 2 felony). There were 208 convictions for first degree murder and 229 for second degree murder over the last three years (race and gender data for these convictions is available upon request).

Effective Date

The bill takes effect upon signature of the Governor or becoming law without his signature.

State and Local Government Contacts

Corrections
Human Services
Law
Public Health and Environment
Counties
Sheriffs

Health Care Policy and Financing
Judicial
Office of Information Technology
Regulatory Agencies
District Attorneys