

LEGAL UPDATES

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## Industry

Healthcare

# Colorado's New End-of-Life Options Act Will Soon Be Law

Last month Colorado voters approved Proposition 106, which amends the Colorado Statutes to allow competent adults with terminal illness and a prognosis of six months or less to live to request and receive prescriptions for aid-in-dying medication, subject to certain conditions. The new Colorado End-of-Life Options Act (the Act) has far-reaching implications for healthcare facilities and requires them to take affirmative steps to give notice if they will not participate in aid-in-dying activities under the Act.

On December 9, 2016, the Colorado Secretary of State certified voting results on the ballot initiative to Gov. John Hickenlooper, who is expected to proclaim the Act law within the next couple of weeks.

### **Law Affects Almost All Healthcare Providers**

Healthcare providers are broadly defined under the Act to include any person or facility licensed, certified, registered or otherwise authorized or permitted by law to administer healthcare or dispense medications. Healthcare providers must fulfill certain responsibilities under the Act, regardless of whether they choose to participate in the aid-in-dying process. These legal responsibilities extend to physicians, nurses, mental health professionals, hospitals, ambulatory clinics, hospice agencies, home health agencies, nursing facilities, assisted living residences, independent living facilities and continuing care retirement communities.

### **Healthcare Facilities Are Not Required to Participate**

The Act enables healthcare facilities to “opt-out” of providing aid-in-dying medication or participating in the aid-in-dying process. However, facilities who do not wish to participate must provide advance written notice of this policy to patients and other individual healthcare providers whose patients

may be admitted or are currently admitted to their facilities. Nonparticipating facilities must be prepared to transfer records of patients or residents who wish to engage in end-of-life activities under the Act to a new healthcare provider.

### **Act Places Significant Responsibilities on Participating Providers**

The Act delineates a series of responsibilities that providers, particularly attending/prescribing physicians, must follow to allow a patient or resident to properly request a prescription for aid-in-dying medication and to complete the required medical consultation and mental health evaluation (when applicable). In addition, the Colorado Department of Public Health and Environment is required to adopt regulations on the reporting and filing of medical information and records for patients who choose to engage in the aid-in-dying process. The department has commenced emergency rulemaking by publishing a proposed rule that requires the attending physician to provide the department with key components of the patient's medical record and for healthcare providers to submit dispensing records regarding the medication prescribed.

### **Important Caveat for Providers Who Participate in Medicare and/or Medicaid**

Under the Assisted Suicide Funding Restriction Act passed by Congress in 1997, federal funds cannot be used to provide healthcare services or items for the purpose of causing or assisting in causing the death of an individual through activities that include assisted suicide, euthanasia or mercy killing. This prohibition means that federal dollars (directly or indirectly through matching payments) cannot be used to **pay** for expenses relating to the item or service furnished for these purposes. It should be noted that this restriction does not apply to the withholding or withdrawing of medical treatment or treatment furnished for alleviating pain or discomfort.

### **What This Means to You**

If you are a licensed healthcare professional, or if you are responsible for the operation of a healthcare organization, association or a facility providing healthcare services to Colorado residents, you must decide whether you will or will not participate in prescribing and/or assisting in the self-administration of aid-in-dying medication under the Act. Whatever you decide to do, it is strongly recommended that you develop and adopt policies and procedures that comply with the Act's requirements. Healthcare facilities, including long-term care facilities and communities, must notify their patients or residents in writing of their policy with respect to participation in assisting in the self-administration of aid-in-dying or such policy may not be enforced.

### **Contact Us**

For more information on how the Colorado End-of-Life Options Act may affect your practice or facility, or for assistance developing policies and procedures related to the Act, please contact

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