



August 14, 2008

SUMMARY OF INITIATIVE 1000

Concerns Allowing Certain Terminally Ill Competent Adults to Obtain Lethal Prescriptions.

*This summary has been prepared in response to specific questions about the provisions and effects of Initiative 1000 and is provided for legislative purposes only; it is **not** provided as an expression for or against the ballot measure. Please remember that it is inappropriate to use public resources to support or oppose a ballot measure. Please refer to the 2008-09 Legislative Ethics Manual or contact Senate Counsel for further guidance on when and how comment on ballot measures is appropriate.*

BRIEF SUMMARY

Initiative 1000 (the Initiative) allows competent adult Washington state residents over 18 who are terminally ill and whose lives are predicted by physicians to end within six months to request and self administer life-ending medication prescribed by a physician.

BACKGROUND

Under Washington law, it is a class C felony to knowingly cause or aid another person to attempt suicide. The maximum sentence for a class C felony is confinement in a state correctional institution for ten years, or a fine of \$10,000 – or both the confinement and the fine.

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Requirements of Requests for Medication

Oral requests. A person wishing to receive a prescription for medication to end his or her life must make two oral requests and a written request. The second oral request must be repeated to the attending physician at least 15 days after making the initial oral request. At the time the second request is made, the attending physician must offer the patient an opportunity to rescind the request.

Written request. A competent resident of Washington State over the age of 18 years who is suffering from a terminal disease and has voluntarily expressed his or her wish to die may submit a written request for medication to be self administered to end his or her life. A terminal disease is defined as an incurable and irreversible disease that has been medically confirmed and, within reasonable medical judgment, will produce death within six months. Neither age nor disability alone constitutes a terminal disease. The form for the written request is specified in the Initiative.

Witnesses. The written request must be witnessed by at least two people who attest that the person making the written request is competent, acting voluntarily, and is not being coerced to sign the request. One of the witnesses may not be (1) a relative by blood, marriage, or adoption of the person making the request; (2) a person who, at the time the request is signed, would be entitled to any of the estate of the person making the request; or (3) an owner, operator, or employee of a health care facility where the person making the request is receiving medical treatment or is a resident. The attending physician of the person making the request may not be a witness. A written request that is made by a patient in a long-term care facility must be witnessed by an individual designated by the facility with the qualifications specified by the Department of Health (DOH).

Responsibilities of Physicians

The attending physician with primary care of a patient making a request for medication to end his or her life must determine whether the patient has a terminal disease, is competent, and is making the request voluntarily. The physician must request that the patient demonstrate Washington State residency. In addition, the attending physician must accomplish the following:

- inform the patient of his or her medical diagnosis and prognosis, the probable risks and result of taking the medication to be prescribed, and feasible alternatives including comfort care, hospice care, and pain control;
- refer the patient to a consulting physician for medical confirmation of the diagnosis and a determination that the patient is competent and acting voluntarily;
- refer the patient for counseling if the attending or consulting physician believes the patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment;
- recommend that the patient notify next of kin;
- counsel the patient about the importance of having another person present when the medication prescribed is taken and to not take the medication in a public place;
- inform the patient of the ability to rescind the request for medication at any time and in any manner and offer the patient an opportunity to rescind at the time the second oral request is made;
- verify, immediately before writing the prescription, that the patient is making an informed decision and that all the required steps have been carried out;
- fulfill the medical record documentation as specified in the Initiative; and
- dispense medications directly to the patient or, with the patient's written consent, inform a pharmacist of the prescription with the requirement that it be dispensed directly to the patient, the attending physician, or an expressly identified agent of the patient.

The attending physician may sign the patient's death certificate which must list the terminal disease as the cause of death.

A consulting physician who is qualified by specialty or experience is required to examine the person requesting a prescription for medication to end his or her life and the relevant medical records. The consulting physician must confirm, in writing, that the attending physician's diagnosis of a terminal disease is correct and must verify that the person making the request is competent, acting voluntarily, and making an informed decision.

At least 48 hours must elapse between the date the patient signs the written request for the medication and the date the prescription is written.

Medical Documentation

The medical record of a patient requesting medication to end his or her life must include the following:

- all oral and written requests for medication to end his or her life in a humane and dignified manner;
- the attending physician's diagnosis and prognosis including a determination that the patient is competent, acting voluntarily, and has made an informed decision;
- the consulting physician's diagnosis and prognosis and verification that the patient is competent, acting voluntarily, and has made an informed decision;
- a report of the outcome and determinations of any counseling performed;
- the attending physician's offer to the patient to rescind his or her request for medication at the time of the second oral request; and
- a notation by the attending physician that all requirements under the Initiative have been met, including the steps that have been taken to carry out the patient's request and a notation of the medication prescribed.

(DOH) Requirements

DOH must annually review all records required to be maintained by the Initiative. Any health care provider who writes a prescription or dispenses medication that a patient will self administer to end his or her life must file a copy of the dispensing record with DOH within 30 days after the writing of the prescription and dispensing of medication. All documents required to be filed with DOH by the prescribing physician after the death of the patient must be mailed to DOH no later than 30 days after the death.

DOH must adopt rules to facilitate the collection of the required information. The information collected is not a public record. DOH must produce and make public an annual statistical report of the information collected regarding compliance with the Initiative.

Effect of Legal Contracts and Other Provisions

Making or rescinding a request for medication to end one's life is not affected by any provision in a contract, will, or other agreement. No obligation owing under a contract may be conditioned or affected by making or rescinding a request by a person for medication to end his or her life. No life, health, or accident insurance or annuity policy may be conditioned upon or affected by making or rescinding a request by a person for medication to end his or her life or the ingesting of such medication by a qualified patient.

Immunities and Liabilities

A person participating in good faith compliance with the provisions of the Initiative may not be subject to civil or criminal liability or professional disciplinary action. Penalties such as censure, discipline, suspension, or loss of license or privileges may not be inflicted on a person participating or refusing to participate in good faith compliance with the Initiative. A request for

medication to end one's life or the provision of such medication may not be the sole basis for the appointment of a guardian or a conservator. Only willing health care providers need to participate in providing medication to a person to end his or her life.

A health care provider may prohibit another health care provider from acting in accordance with the Initiative on the prohibiting health care provider's premises if notice of the policy has been given to the pertinent health care providers and to the general public. Sanctions such as loss of privileges or membership may be pursued by the prohibiting health care provider but these actions are not reportable to a disciplining authority.

It is a class A felony to willfully alter or forge a request for medication to end a person's life or conceal or destroy a rescission of that request with the intent or effect of causing the patient's death. It is also a class A felony to coerce or exert undue influence over a patient to request medication to end his or her life, or destroy a rescission of a request.

Costs incurred by a governmental entity due to a person terminating his or her life under the provisions of the Initiative in a public place may be recovered from the estate of the person, including reasonable attorneys' fees.

Fiscal Impact

As required under RCW 29A.72.025, the Office of Financial Management (OFM) has provided an estimate for the cost of the initiative as follows:

DOH is required to create and make public an annual statistical report of information collected. DOH will also adopt rules on the process for collection of this information. Rule-making costs are estimated at \$60,000. On-going data collection and reporting costs are estimated at \$19,000. Total costs for the 2009-11 biennium are \$79,000.

For information on assumptions, see the OFM statement of fiscal impacts (given in total dollars only) at the following website: <http://www.ofm.wa.gov/initiatives/1000.asp>

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This summary should not be considered legislative history for purposes of interpreting Initiative 1000