



December 15, 2016

Kirk Bol  
Manager, Registries and Vital Statistics Branch  
Office of e-Health and Data  
4300 Cherry Creek South Drive

Dear Kirk:

On behalf of our more than 100 hospital and health system members statewide, the Colorado Hospital Association (CHA) thanks the Colorado Department of Public Health and Environment (Department) for the opportunity to comment on the proposed promulgation of 6 CCR 1009-4, *Reporting and Collecting Medical Aid-in-Dying Medication Information*.

The Association commends the Department's effort to quickly develop this proposed emergency rule given the fast implementation timeline for Proposition 106 (herein "the Act"). CHA also supports the proposed rule's overall objective to ensure uniformed reporting by health care providers who intend to participate under the Act. The Association, however, has identified three areas of concern and respectfully submits the following feedback.

#### **Requirements for Reporting Medical Record Information to the Department**

Although CHA supports the reporting requirements outlined in I.A. of the proposed rule, CHA has initial concerns regarding the reporting requirements outlined in I.B. First, under the Act, the attending physician has a number of mandated reporting requirements, which are reflected clearly in I.A. The Act, however, does not mandate physicians to report to the Department any of the requirements outlined in I.B, which brings into question whether the Department has the statutory authority to require physicians to report this information. As a result, CHA recommends that the Department postpone the inclusion of content currently in I.B until the permanent rulemaking scheduled for April 2017. This would allow for more thoughtful consideration of the requirements and greater stakeholder input.

#### **Requirements for Reporting Dispensing Record Information to the Department**

Under the Act, a health care provider – upon dispensing medical aid-in-dying medication – is required to file a copy of a dispensing record with the Department. CHA supports this requirement as currently reflected in the proposed rule. The Association's overall concern, however, is a functional one. Because the Act does not require notice to the pharmacist that the prescription requested to be filled is medical aid-in-dying medication, a dispensing pharmacist may not have sufficient knowledge to comply with the reporting requirement or exercise their right to opt-out. Without proper notification, the pharmacist may be unaware that the medication requested to be filled is medical aid-in-dying medication, and therefore, the pharmacist will not recognize his or her reporting responsibilities. In addition, if the pharmacist does not receive notification, he or she may not be provided an opportunity to exercise his or her right to opt-out of participating in activities under the Act – a right the pharmacist has pursuant to 25-48-117. As such, CHA encourages the Department – through this emergency rulemaking – to provide more clarity regarding necessary communication between the prescribing physician and the dispensing pharmacist.

Additionally, the Department references "attending physician" and "physician" under the requirements for reporting medical record information. Under the requirements for reporting dispensing record information section, however, the Department references "health care provider" which is defined in the Act as "a person who is licensed, certified, registered, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession. The term includes a health care facility,

including a long-term care facility as defined in section 25-3-103.7 (1) (f.3) and a continuing care requirement community as described in section 25.5-6-203 (I)(c)(I), C.R.S.” Since the Department uses the term “health care provider” in the proposed rule, and health care provider includes “health care facility” – which is subsequently neither defined in the Act nor in the proposed rule – the Association strongly encourages the Department to clarify the meaning of “health care facility” within the context of the proposed rule.

### **Health Care Provider Education**

Due to the rapid implementation timeline for the Act, initial and ongoing education for health care providers by the Department and your partners in the private sector is paramount. CHA strongly encourages the Department to take proactive steps to ensure health care providers understand requirements for reporting both medical record information and dispensing record information. In order to achieve this goal, the Association recommends that the Department develop a physician reporting requirement form as well as a physician checklist, which will provide a standardized mechanism for participating in activities under the Act, including reporting to the Department. This additional guidance by the Department will be helpful to individual physicians and to health care organizations overseeing employed physician activities under the Act.

The Association is dedicated to working with the Department on this issue moving forward, and please feel free to contact our subject-matter expert on this issue, Amber Burkhart, Policy Analyst, at [amber.burkhart@cha.com](mailto:amber.burkhart@cha.com). Thank you for your consideration of our comments.

Sincerely,



Katherine Mulready  
Chief Strategy Officer & Vice President of Legislative Policy