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FISCAL IMPACT REPORT

LAST UPDATED 2/23/23
SPONSOR Cervantes/Stefanics **ORIGINAL DATE** 2/21/23
SHORT TITLE Refusal of End-Of-life Options Act **BILL NUMBER** Senate Bill 471/ec

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Duplicate of House Bill 501

Sources of Information

LFC Files

Responses Received From
Department of Health (DOH)
Human Services Department (HSD)

SUMMARY

Synopsis of Senate Bill 471

Senate Bill 471 amends the Elizabeth Whitefield End-of-Life Options Act, Chapter 24-7C NMSA 1978, to allow persons to refuse to participate in the end-of-life options on the basis of their conscience – those persons with a conscious objection may refuse to provide information about end-of-life options, and refusing to make a referral to someone who would participate.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 471, and no anticipated fiscal impact.

SIGNIFICANT ISSUES

HSD notes that "The current process for Medical-Aid in Dying has important and thorough checks in place to prevent inappropriate use. For a patient, these checks do create several layers

of barriers. First, the patient must obtain evaluations from two providers, at least one of which has to be a physician. Both have to declare that the patient has less than six months to live, has cognitive capacity to make this decision, and is physically able to self-administer the medication. Then, the prescriber must send the prescription to one of two pharmacies in the state that dispense these medications".

Despite this, some providers of medical care, physicians, nurse and others, object to providing information about end-of-life options. Canada's end-of-life options bill provides exceptions for those with conscientious objections, and is discussed in this article regarding nurses but applicable to others: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7027545/. Its conclusions are as follows:

> For some nurses, the decision to participate, or not, in MAiD will be relatively simple, and for others, it will be complex and uncertain. In this paper, we have proposed a number of factors that may influence the decision to participate or not, and a number of strategies nurses can use as a starting point for moral imagination and deliberation. Discerning ones' moral intuition, reflecting on that intuition, and engaging in conversations with others of differing viewpoints, seems a good starting point. From there, nurses can explore and weigh the impact of their decision on the constellation of their personal and professional relationships. Grappling with questions about similar end-of-life decisions that also hasten death may support some degree of nurses' moral coherence. However, the diverse clinical conditions of patients who are eligible for MAiD may mean that nurses are on unfamiliar moral ground. This may make it difficult for nurses to clearly define themselves as conscientious objectors or not. Instead, they may find themselves on a path of moral discovery whereby they need to engage in and reflect on the issues, both as individuals and in conversation with others. Dwelling in this gray zone of moral learning may be uncomfortable for nurses and inconvenient for a system that requires nurses to identify as conscientious objectors or not. But, in that discomfort we would do well to remind ourselves that nurses have a long and distinguished history of crafting and evolving coherent, and increasingly robust, moral responses to this complex healthcare world.

DOH discusses legal consequences of the original act and the current bill:

> SB471 relates to pending litigation in the matter of *Mark Lacy, M.D. and Christian Medical & Dental Associations v. Hector Balderas et al.*, case no 1:22-cv-00953 in the U.S. District Court for the District of New Mexico. In that case, Plaintiffs have brought suit against the Attorney General, the former Cabinet Secretary of the Department of Health, David R. Scrase, M.D., and the members of the New Mexico Board of Medicine, seeking injunctive and declaratory relief. The Plaintiffs seek a declaration from the court, that the referral and informing requirements of the End-of-Life Options Act at section 24-7C-7(C), NMSA 1978 violate various constitutional rights of the Plaintiffs, including First Amendment, due process, and equal protection rights; and that the prohibition against discipline by professional organizations at section 24-7C-7(B), NMSA 1978 violates the Plaintiff-professional organization's right to expressive association under the First Amendment…
>
> By removing the existing reference to a "professional organization or association" in section 24-7C-7(B), NMSA 1978, the bill should resolve legal disputes concerning whether professional organizations or associations may censure or discipline a member for participating or refusing to participate in medical aid in dying.

DUPLICATION

Duplicate of House Bill 501.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If this bill is not enacted, all health care providers asked for end-of-life options by dying patients will have to provide information about the options, whether they object as a matter of conscience or not. Some who object may continue with their lawsuit to invalidate provisions of the Elizabeth Whitefield End-of-Life Options Act.

LAC/al/ne