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Why People with Disabilities Have an Interest in Defeating Initiative Petition 1112
*By Stephen L. Mikochik**

Initiative Petition 1112 will allow Massachusetts residents to ask their physicians for lethal medication to kill themselves. Presently, it authorizes only those with terminal diseases to make such request. Nevertheless, if adopted, it will create a real threat to all people with disabilities.

The fact is that people with terminal diseases are disabled. Under Massachusetts law, "handicap" includes any physical impairment that "substantially limits one or more major life activities [,]"[1] such as "caring for one's self," "performing manual tasks," or even "breathing."[2] Few, if any, terminal diseases would fall outside such definition.[3] Consequently, the *Initiative Petition*, by qualifying persons for lethal medication because of a terminal disease but not "solely because of [a] disability [,]"[4] is simply incoherent.

The *Initiative Petition* affords only certain people with disabilities, those whose conditions are considered terminal, the chance to make themselves dead. All other people are denied that choice, presumably because, in contrast, their lives are thought worth saving. It is not dignity such disabled people are offered, it is death.

There is no bright line between a disability considered terminal and one that is not. The *Initiative Petition* offers lethal prescriptions to people whose conditions "will, within reasonable medical judgment, produce death within six months."[5] Such predictions are notoriously unreliable.[6] Many people defy the odds and live on with their disabilities for many years.

Under the *Initiative Petition*, people can have lethal medication in hand as few as fifteen days after receiving a terminal diagnosis.[7] Thus, when most vulnerable and open to

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[1] M.G.L.A. 151B §1 (17).
[2] *Id.* at § 1 (20).
[3] Massachusetts follows the definition of "handicapped person" in federal nondiscrimination law. *See e.g.*, 45 C.F.R. § 84.3(j). Examples under that definition include such potentially fatal "diseases and conditions" as "muscular dystrophy, multiple sclerosis, cancer, [and] heart disease [.]" *Id.* at Pt. 84, App. A ((3) "Handicapped person").
[4] *Initiative Petition 1112*, § 2 (2), available at http://choiceisanillusion.files.wordpress.com/2011/10/ma_initiative_001.pdf.
[5] *Id.* at § 1 (13).
[6] For example, many people diagnosed with Multiple Sclerosis experience periods of remission or partial recovery. *See* Multiple Sclerosis Types- Mayo Clinic, available at http://www.mayoclinic.org/multiple-sclerosis/types.html (accessed Dec. 2, 2011).

[7] To receive a lethal prescription, persons must make an oral, written, and a second oral request. *See Initiative Petition, supra* note 4, at § 9. There is a 15 day waiting-period between the first oral request, which may occur at the time the terminal diagnosis is made, and when the lethal prescription is written. *See id.* at § 11 (1); *see also id.* at § 9. Though 48 hours must elapse between the written request and the lethal prescription, *see id.* at § 11 (2), that may occur during the 15 day waiting period. If legally authorized and properly

suggestion, such people will receive the thinly veiled message, sanctioned by the State, that they are better off dead. A terminal diagnosis consequently becomes a self-fulfilling prophesy since those who would have lived longer may "take the hint" and die.

The *Initiative Petition* is merely the first step toward making lethal medication available to all those with severe disabilities. Massachusetts is the latest stage in a nationwide strategy to legalize physician-assisted suicide. During the successful 2007-08 initiative campaign in Washington State, a prime supporter conveyed the hope that the law would eventually allow some whose debilitating conditions were not terminal to kill themselves.[8] Now, four years later, there is a proposal to do just that.[9] There was a further attempt to expedite the process in New Hampshire three years ago through a legislative proposal that defined "terminal condition" so expansively that it could include diabetes, Parkinson's disease, and other conditions that might "result in premature death."[10]

All such efforts in New Hampshire failed, however, not surprisingly, since "[n]o such law has made it through the scrutiny of a legislature."[11] With *Initiative Petition 1112*, the campaign has reverted back to its Washington strategy, [12] avoiding legislative inquiry by conducting a sound-bite initiative campaign and focusing first on the terminally ill "[t]o improve the chances of passage [.]"[13]

The citizens of Massachusetts, however, are no fools. Like numerous legislatures that have already rejected similar bills, they know a bad law when they see it; and, as one analyst has observed, Initiative Petition 1112 is a recipe for abuse:

> [Under the *Initiative Petition*,] an heir, who will benefit financially from a patient's death, is allowed to participate as a witness to help sign the patient up for the lethal dose. This situation invites undue influence and coercion.

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certified, the attending physician can directly dispense the lethal medication, conceivably on the same day of the second oral request, *see id.* at § 4 (l) (i), or, with the patient's written consent, deliver the prescription to a pharmacist who will dispense the medication instead. *See id.* at § 4 (l) (ii) (B).

[8] *See* Bergner, Daniel, "Death in the Family," N.Y. Times Mag. (Dec. 2, 2007) (interview with former Washington governor, Booth Gardner).

[9] See Faller, Brian, "Perhaps Its Time to Expand Washington's Death with Dignity Act"- Editorials- The Olympian (Nov. 16, 2011), available at http://www.theolympian.com/2011/11/16/v-print/1878667/perhaps-its-time-to-expand-washingtons.html (accessed Dec. 3, 2011). The author, a member of the Olympian's Board of Contributors, candidly acknowledged that, "[t]o improve the chances of passage, the [Washington] Death with Dignity Act was written to apply only to the choices of the terminally ill who are competent at the time of their death." *Id.*

[10] Drake, Stephen, "New Hampshire Poised to Redefine 'Terminally Ill' - to PWDs and others for Physician-assisted Suicide Eligibility" (Jan. 30, 2009), Available at http://notdeadyetnewscommentary.blogspot.com/2009/01/new-hampshire-poised-to-redefine.html(accessed Dec. 3, 2011)(HB 304: "'Terminal condition' means an incurable and irreversible condition, for the end stage of which there is no known treatment which will alter its course to death, and which, in the opinion of the attending physician and consulting physician competent in that disease category, will result in premature death.").

[11] Dore, Margaret, "Physician-assisted Suicide: A Recipe for Elder Abuse; Do not be Deceived "(Dec. 2, 2011), available at http://www.massagainstphysician-assistedsuicide.org (accessed Dec. 4, 2011).

[12] Physician-assisted suicide also expanded through incremental steps in the Netherlands:

> Over the past two decades, the Netherlands has moved from assisted suicide to euthanasia, from euthanasia for the terminally ill to euthanasia for the chronically ill, from euthanasia for physical illness to euthanasia for psychological distress and from voluntary euthanasia to nonvoluntary and involuntary euthanasia.

Assisted Suicide in the United States: Hearing Before the Subcomm. on the Constitution of the Comm. on the Judiciary, House of Representatives, 104th Cong. 349, 127-38 (1996) (prepared testimony of Herbert Hendin, M.D.).

[13] Faller, *supra* note 9.

Once the lethal dose is issued by the pharmacy, there is no oversight. The act does not require witnesses when the lethal dose is administered. Without disinterested witnesses, an opportunity is created for an heir, or another person who will benefit from the patient's death, to administer the lethal dose to him without his consent. Even if he struggled who would know?[14]—not other family members who may not even know that their loved one died from lethal medication since the physician must falsify the death certificate to "list the underlying terminal disease as the cause of death."[15]

Finally, even if limited to those with terminal conditions, *Initiative Petition 1112* will validate discrimination against all people with disabilities. The *Initiative Petition* is modeled on laws adopted in Oregon and Washington State and has nearly identical reporting requirements.[16] Annual reports in both states[17] track "loss of autonomy" and "loss of dignity" as reasons why people request lethal medication. But these are the very grounds that support societal prejudice against people with disabilities generally. As a prominent activist has explained:

[P]opular culture has done virtually nothing to educate the public about how people with severe disabilities actually live autonomous and dignified lives. Our lives are portrayed as tragedies or sensationalized as heroism, but the real life issues and coping styles that most people will need if they live long enough are left out of the picture. No wonder people who acquire disabilities so often see death as the only viable solution.[18]

If loss of autonomy and loss of dignity are accepted as valid reasons for killing oneself, it will legitimate the prejudice that has long underlaid treatment of disabled people as second-class. The citizens of Massachusetts should utterly reject "the view that an acceptable answer to discrimination and prejudice is to assure the 'right to die' to those against whom the discrimination and prejudice exists."[19]

Accordingly, people with disabilities have good reason to oppose this deeply flawed initiative petition.

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[14] Dore, *supra* note 11 (citations omitted).

[15] *Initiative Petition*, *supra* note 4, at § 4(2).
[16] *See id.* at § 15(3); O.R.S. 127.865.3.11(3) (Oregon); West's R.C.W.A. 70.245.150(3) (Washington).
[17] *See* Oregon Public Health Division, Table 1, available at https://docs.google.com/viewer?url=http%3A%2F%2Fpublic.health.oregon.gov%2FProviderPartnerResources%2FEvaluationResearch%2FDeathwithDignityAct%2FDocuments%2Fyr13-tbl-1.pdf (accessed Dec. 6, 2011) (2010 Statistical Report, Oregon Death with Dignity Act); Washington State Department of Health 2009 Death with Dignity Act Report, "Executive Summary," available at www.doh.wa.gov/dwda/forms/dwda_2009.pdf (accessed Dec. 6, 2011).
[18] Coleman, Diane, "State's Rights Versus Civil Rights," Seattle Post-Intelligencer, Section: Editorial (Sept. 29, 2005).
[19] Coleman, Diane, "Assisted Suicide and Disability: Another Perspective," 27-WTR Hum. Rts. 6, 7 (2000)(quoting from a 1989 U.S. Civil Rights Commission Report, "Medical Discrimination Against Children with Disabilities").