



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in SUPPORT of SB 536 SD2 HD1
RELATING TO PRESCRIPTIONS.**

REP. SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: March 27, 2019

Room Number: 308

1 **Fiscal Implications:** N/A.

2 **Department Testimony:** The Department of Health supports SB536 SD2 HD1, the purpose of
3 which is to diminish the administrative burden on physicians attending to patients seeking
4 medical aid in dying pursuant to the Our Care, Our Choice Act. The department does not believe
5 that the proposed exemption will increase the risk of diversion for commonly used prescription
6 medications for end-of-life care.

7 The department recommends the committee report reflect an effective date upon approval to be
8 of more immediate assistance to physicians and patients.

9 Thank you for the opportunity to testify in support of this measure.

10 **Offered Amendments:** N/A.

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Introduction

Good morning Chair and Members of the Committee. My name is Sam Trad, I am the Hawaii State Director for Compassion & Choices, the nation's oldest and largest nonprofit organization working to improve care and expand choice at the end of life.^{1,2,3,4,5} Compassion & Choices advocates for legislation to improve the quality care for terminally ill adult patients and affirms their right to determine their own medical treatment options as they near the end of life. I am writing to affirm our support for SB 536: *Our Care, Our Choice Act: Relating to Prescriptions*.

What is Medical Aid in Dying?

Medical aid in dying refers to a medical practice in which a mentally capable, terminally ill adult with six months or fewer to live may request from his or her physician a prescription for a medication that the he or she can take to peacefully pass away in their sleep if and when, their suffering becomes unbearable.

Medical aid in dying is currently authorized in seven states as well as the District of Columbia (2016, legislation)⁶ either through statute or court decision including: Oregon (1994, ballot initiative),⁷ Washington (2008, ballot initiative),⁸ Montana (2009, state Supreme Court decision),⁹

¹ Compassion & Choices brought landmark federal cases establishing that dying patients have the right to aggressive pain management, including palliative sedation. *Vacco v. Quill*, 521 U.S. 793 (1997); *Washington v. Glucksberg*, 521 U.S. 702 (1997).

² Compassion & Choices drafted and sponsored introduction of legislation requiring comprehensive counseling regarding end-of-life care options. See, California Right to Know End-of-Life Options Act, CAL. HEALTH & SAFETY CODE §442.5; New York Palliative Care Information Act, N.Y. PUB. HEALTH LAW § 2997-c.

³ For example, Compassion & Choices is pursuing accountability for failure to honor a patient's wishes as documented in a POLST, *DeArmond v Kaiser*, No. 30-2011-00520263 (Superior Court, Orange County, CA). In another case, Compassion & Choices represented a family in bringing into the public eye a situation where patient wishes to forego food and fluid were obstructed. See Span, "Deciding to Die, Then Shown the Door," *The New York Times*, Aug. 24, 2011, available at <http://newoldage.blogs.nytimes.com/2011/08/24/deciding-to-die-then-shown-the-door/?ref=health>; Uyttebrouck, "Couple Transported Out of Facility After Refusing Food," *Albuquerque Journal*, Jan. 08, 2011, available at <http://www.abqjournal.com/news/metro/08232859metro01-08-11.htm>.

⁴ Compassion & Choices brought two federal cases to the United States Supreme Court urging recognition of a federal constitutional right to choose aid in dying. *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Vacco v. Quill*, 521 U.S. 793(1997). Compassion & Choices was in leadership in the campaigns to enact the Death with Dignity Acts in Oregon and Washington. OR. REV. STAT. § 127.800 (2007); WASH. REV. CODE ANN. § 70.245 (West 2011).

⁵ See supra n. 1, Bergman, Tomlinson, Tolliver, Hargett; See supra n. 3, DeArmond.

⁶ District of Columbia, Death with Dignity Act, Available from: https://dchealth.dc.gov/sites/default/files/dc/sites/doh/page_content/attachments/Death%20With%20Dignity%20Act.FINAL_.pdf

⁷ Oregon Death With Dignity Act. Oregon Revised Statute. Chapter 127. Enacted October 27, 1997. Available from <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Page/s/ors.aspx>.

⁸ Washington Death With Dignity Act. Complete Chapter 70.245 RCW, Complete Chapter. Enacted November 4, 2008. Available from <http://apps.leg.wa.gov/RCW/default.aspx?cite=70.245>.

⁹ Montana Supreme Court Ruling *Baxter v. Montana*. December 2009 Available from <https://www.compassionandchoices.org/wp-content/uploads/2017/01/Montana-Supreme-Court-Opinion.pdf>

**Testimony on Our Care, Our Choice Act: Relating to Prescriptions - Supportive
Compassion & Choices
Finance Committee
March 28, 2019**

Vermont (2013, legislation),¹⁰ California (2015, legislation),¹¹ Colorado (2016, ballot initiative)¹² and Hawaii (2018, legislation).¹³

Why Terminally Ill Individuals Request Medical Aid in Dying

Across the country in authorized states we see the same trend: patients who request and qualify for medical aid in dying never use it, but have their prescription ready to be filled just in case their suffering becomes unbearable. We hear from terminally ill individuals who we serve that simply having a prescription for medical aid in dying gives them a great sense of comfort and peace of mind. Many dying people choose to leave the medication at the pharmacy or in a safe place in their home, and then, if their suffering becomes unbearable, they can make the decision whether to self-administer the medication.

SB 536 - Our Care, Our Choice Act: Relating to Prescriptions is Good Public Policy

The bill you are considering is good public policy because it allows a dying person who has qualified under the Our Care, Our Choice Act to leave a prescription for medical aid in dying at the pharmacy for a longer time period. This is good public policy because approximately one-third (1/3) of patients who receive a prescription for medical aid in dying never self-administer the medication.

More flexibility in choosing when a terminally ill patient can pick up a prescription for medical aid-in-dying (1) provides the same palliative effect of comfort and peace of mind for a dying person, (2) allows the medication to stay the pharmacy without the need for disposal and (3) does not force the purchase of potentially expensive medication that may never be used. For all the reasons that we support this legislation, we suggest extending the time period in this bill to 90-180 days to give more flexibility to dying patients and increase the benefit.

Conclusion

We support this legislation and suggest that the time period for qualified individuals to pick up prescriptions for medical aid in dying be extended. Thank you, Chair and Members of the Committee, for your timely leadership on this important issue.

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¹⁰ Vermont Patient Choice and Control at the End of Life Act. Act 039, Chapter 113. Enacted May 2013. Available from <http://www.leg.state.vt.us/docs/2014/Acts/ACT039.pdf>

¹¹ California End of Life Option Act. SB-128 End of Life. Enacted October 2015. Available from http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB128&search_keywords=
¹² Colorado End of Life Options Act, Proposition 106, Passed November 8, 2016, Pending implementation. Retrieved from:

<http://coendoflifeoptions.org/wp-content/uploads/2016/06/Full-Text-of-Measure.pdf>

¹³ Hawaii Our Care, Our Choice Act, HB 2739, Signed April 4, 2018. Pending Enactment. Available from: https://www.capitol.hawaii.gov/session2018/bills/HB2739_HD1_.pdf