



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony COMMENTING on HB690
RELATING TO PRESCRIPTIONS.**

REP. JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date: January 7, 2019

Room Number: 329

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

2 **Department Testimony:** The Department of Health offer the following Comments on HB690.

3 Page 1, Lines 9 – 13: Proposed amendments provide that medication prescribed pursuant to
4 chapter 327L, the “Our Care, Our Choice Act,” otherwise known as medical aid in dying, may be
5 filled and held by the pharmacy for not more than thirty days. Current statute requires certain
6 controlled substances to be picked up after being filled within seven days.

7 The department acknowledges the convenience for terminally ill patients and the diminished risk
8 for accidental poisoning if the medication is stored securely in a pharmacy as opposed to a
9 private residence. However, DOH is unable to comment since a thorough review of federal
10 controlled substances laws is not yet complete and therefore takes no position.

11 Bill Section 5: The Department of Health notes that revisions included in HB690, if enacted as
12 drafted, will be repealed on June 30, 2023. Section 329-38, HRS, was revised in 2017 (as Act
13 66) and included a repeal and reenactment language, therefore any amendments after July 1,
14 2017 will be repealed.

15 **Offered Amendments:** The department defers to Legislative drafting agencies for precise
16 amendments but offers the following, if the intent of the Legislature is to keep the revisions in
17 HB 690, wording that exempts future amendments from being repealed is required. An example
18 may be as follows:

1 “SECTION 6. This Act shall take effect on July 1, 2017, and shall be repealed on June 30, 2023;
2 provided that sections 329-38 and 457-12 (a) , Hawaii Revised Statutes, **shall be reenacted in**
3 **the form in which they read on the day prior to the effective date of this Act.**”

4 Also note that sections 329-38.2 and 329-38.5, HRS, will be repealed in its entirety on June 30,
5 2023. This may be acceptable for purposes of HB690 since the revisions are just adding an
6 exemption for qualifying patients pursuant to chapter 327L, HRS.

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HAWAII SUBSTANCE ABUSE COALITION

HB690 PDMP Exempts Hospice and Treatment Providers

COMMITTEE ON HEALTH:

- Rep. Mizuno, Chair; Rep. Kobayashi, Vice Chair
- Thursday, Feb. 7, 2019: 8:30 am
- Conference Room 329

Hawaii Substance Abuse Coalition Supports HB690:

GOOD MORNING CHAIRS, VICE CHAIRS AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of almost 40 non-profit alcohol and drug treatment and prevention agencies.

We support that PDMP not apply to the State's our care, our choice act.

We appreciate the opportunity to provide testimony and are available for questions.

**Testimony on Our Care, Our Choice Act: Relating to Prescriptions - Supportive
Compassion & Choices
House Committee on Health
February 7, 2019 8:30 am**

Introduction

Good morning Chair and Members of the Committee. My name is Kat West, I am the National Director of Policy & Programs 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 of end-of-life 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 before you to lift the voices of Hawai'i C&C supporters not all able to be here, and to affirm our support for HB 690 - 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/Pages/ors.aspx>.

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

What we hear directly from the terminally ill individuals who we serve is that people choose to make a request for medical aid-in-dying prescription for the sense of comfort and peace of mind having a prescription brings them. Many dying people choose to leave it 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.

HB 690 - 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 ($\frac{1}{3}$) 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 to 90-180 days for increased benefit.

Thank you, Chair and Members of the Committee, for your timely leadership on this important issue.

Kat West, National Policy & Programs Director for Compassion & Choices.

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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>

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

HB-690

Submitted on: 2/6/2019 7:55:53 AM

Testimony for HLT on 2/7/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments: