

Honolulu, Hawaii
MARCH 1, 2018

RE: H.B. No. 2739
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committees on Health & Human Services and Judiciary, to which was referred H.B. No. 2739 entitled:

"A BILL FOR AN ACT RELATING TO HEALTH,"

beg leave to report as follows:

The purpose of this measure is to allow qualified patients in Hawaii to determine their own medical care at the end of their lives. Specifically, this measure:

- (1) Establishes a regulated process under which an adult resident of Hawaii with a medically confirmed terminal illness with less than six months to live may choose to obtain a prescription for medication to end the adult's life; and
- (2) Imposes criminal sanctions for tampering with a patient's request for a prescription or coercing a patient to request a prescription.

The Office of the Governor, Lieutenant Governor, Department of the Attorney General, Department of Health, The Interfaith Alliance of Hawai'i, Hawaii Association of Professional Nurses, Hawai'i Alliance for Progressive Hawaii, Progressive Democrats of Hawai'i, Aloha Light Team, Death with Dignity National Center, Hawaii State AFL-CIO, Hawai'i Death with Dignity Society, Hawai'i



Friends of Civil Rights, LGBT Caucus of the Democratic Party of Hawai'i, Rainbow Family 808, Hawaii Citizens for End of Life Choices, The American Civil Liberties Union of Hawai'i, The Libertarian Party of Hawaii, Young Progressives Demanding Action, IMUAlliance, Filipina Advocacy Network, Hawaii Martin Luther King, Jr. Coalition, Ho'omana Pono, LLC, Hawai'i Psychological Association, The Kupuna Caucus of the Democratic Party of Hawaii, Americans for Democratic Action, International Longshore and Warehouse Union Local 142, Hawai'i Advocates for Consumer Rights, Women's Caucus of the Democratic Party of Hawai'i, Planned Parenthood Votes Northwest and Hawaii, ACLU People Power, Oahu County Committee on Legislative Priorities of the Democratic Party of Hawaii, Community Alliance on Prisons, Hawaii Citizens for End of Life Choices, Hawaii County Democratic Party, Civic Education Council, and a great number of concerned individuals provided testimony in support of this measure.

Concerned Women for America of Hawaii, American Nurses Association, National Association of Pro-Life Nurses, Hawaii's Partnership for Appropriate and Compassionate Care, Patients' Rights Action Fund, Calvary Chapel Pearl Harbor, Not Dead Yet, Emmanuel Lutheran Church and Schools of Maui, A Place for Women in Waipio, Hauoli Home Care, LLC, St. Francis Healthcare System of Hawaii, Choice is an Illusion, Hawaii Family Forum, Roman Catholic Church in the State of Hawaii - Hawaii Catholic Conference, Maranatha Ministries, Inc., The Prayer Center of the Pacific, Honolulu County Republican Party, Hawaii Life Alliance, Advocates for the Mentally Ill, Hawaii Self Advocacy Advisory Council, Catholic War Veterans of the United States of America, Our Lady of the Mount Church, Montanans Against Assisted Suicide, and a great number of concerned individuals provided testimony in opposition to this measure.

Compassion & Choices, Hawaii Federation of Republican Women, American Nurses Association, and a few concerned individuals provided comments.

Your Committees have amended this measure by:

- (1) Amending its purpose statement;
- (2) Deleting an advanced practice registered nurse from the definition of "attending provider" who may prescribe or dispense medication pursuant to this measure;



- (3) Amending the definition of "capable" with respect to a patient's ability to request a prescription pursuant to this measure to:
 - (A) Exclude a court's opinion regarding capability; and
 - (B) Include a patient's ability to understand the patient's choices for care, including risks and benefits;
- (4) Deleting the requirement under the definition of "consulting provider" that the consulting provider be a physician who has not previously assumed responsibility for the care of the patient with the attending provider;
- (5) Redefining "counseling" required before a patient may request a prescription pursuant to this measure as one or more consultations, which may be provided through telehealth, as necessary between a psychiatrist, psychologist, or clinical social worker and patient for the purpose of determining that a patient is capable and does not appear to be suffering from undertreatment or nontreatment of depression or other conditions which may interfere with the patient's ability to make an informed decision;
- (6) Distinguishing the rights and duties of a health care facility and those of a health care provider;
- (7) Defining "self-administer" as an affirmative, conscious, voluntary act by an individual to take into the individual's body prescription medication to end the individual's life;
- (8) Increasing the minimum number of days that must elapse between a qualified patient's initial oral request and second oral request from 15 to 20;
- (9) Requiring counseling for all qualified patients;
- (10) Deleting the requirement that the death certificate list the self-administration of the medication prescribed as the immediate cause of death;



- (11) Including the counselor's statement that the patient is capable, and not suffering from undertreatment or nontreatment of depression or other conditions which may interfere with the patient's ability to make an informed decision, in required medical records and corresponding acknowledgments in the written request and final attestation forms;
- (12) Expanding the information allowed in the annual report by the Department of Health to include any other data deemed appropriate by the Department;
- (13) Clarifying that only a health care facility, as opposed to a health care provider, may:
 - (A) Prohibit a health care provider from performing the duties of an attending provider, consulting provider, or counselor; and
 - (B) Impose sanctions on a health care provider for good-faith actions taken in compliance with this measure;
- (14) Clarifying the prohibited acts and criminal penalties regarding interference with or destruction of requests for a prescription and rescission of a request for a prescription;
- (15) Deleting the proviso on the request for medication form and final attestation form stating that the attending provider may assist in the administration of the medication if the patient is unable to self-administer the medication due to the terminal illness and adding an acknowledgment that the patient may choose to not obtain or use the medication;
- (16) Requiring the Department of Health to form an advisory group to provide advice to the Department to facilitate the implementation of this measure;
- (17) Changing its effective date to January 1, 2019; provided that the Department of Health is required to form the advisory group upon approval; and



- (18) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Health & Human Services and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2739, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2739, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committees on Health & Human
Services and Judiciary,


SCOTT Y. NISHIMOTO, Chair


JOHN M. MIZUNO, Chair



State of Hawaii
House of Representatives
The Twenty-ninth Legislature

HSCR 902-18

Record of Votes of the Committee on Health & Human Services

Bill/Resolution No.: HB 2739	Committee Referral: HHS/JUD	Date: 2-28-18		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
HHS Members	Ayes	Ayes (WR)	Nays	Excused
1. MIZUNO, John M. (C)	✓			
2. KOBAYASHI, Bertrand (VC)	✓			
3. BELATTI, Della Au	✓			
4. LEARMONT, Lei R.	✓			
5. TUPOLA, Andria P.L.			✓	
TOTAL (5)	4	0	1	0
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation.				
Vice Chair's or designee's signature: _____ <small>committee acronym(s)</small>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				

