

Honolulu, Hawaii

MAR 19 2018

RE: H.B. No. 2739

H.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred H.B. No. 2739, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO HEALTH,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish a regulated process for an adult resident of the State who is diagnosed with a medically confirmed terminal disease that will result in the adult resident becoming deceased in less than six months to obtain a prescription for medication to end the patient's life; and
- (2) Impose criminal sanctions for tampering with a patient's request for a prescription or coercing a patient to request a prescription.

Your Committee received testimony in support of this measure from the Office of the Governor; Office of the Lieutenant Governor; Department of the Attorney General; Department of Health; Hawai'i Psychological Association; International Longshore and Warehouse Union, Local 142; Hawaii State AFL-CIO; Americans for Democratic Action - Hawai'i; Hawaii Citizens for End of Life Choices; Planned Parenthood Votes Northwest and Hawaii; Hawai'i State Democratic Women's Caucus; Oahu County Committee on



Legislative Priorities of the Democratic Party of Hawai'i; LGBT Caucus of the Democratic Party of Hawai'i; Rainbow Family 808; Filipina Advocacy Network; IMUAlliance; Kupuna Caucus of the Democratic Party of Hawai'i; Hawai'i Advocates for Consumer Rights; Hawai'i Death with Dignity Society; Hawai'i Friends of Civil Rights; Compassion and Choices - Hawai'i; Ho'omana Pono, LLC; Hawaii Martin Luther King, Jr. Coalition; Compassion and Choices; Ho'omanapono Political Action Committee; American Civil Liberties Union of Hawai'i; over one hundred thirty individuals; and a petition with over one thousand signatures. Your Committee received testimony in opposition to this measure from the St. Francis Healthcare System of Hawaii; Hau'oli Home Care, LLC; Honolulu County Republican Party; Hawaii Federation of Republican Women; Hawaii Family Forum; Hawaii Catholic Conference; Coptic Orthodox Church - The Hawaiian Mission; Mauka Makai Ministries - Windward; Concerned Women for America; Christian Counseling and Research Centers of America; Hawaii's Partnership for Appropriate and Compassionate Care; American Nurses Association; Not Dead Yet; Association of Programs for Rural Independent Living; Disability Rights Education & Defense Fund; National Council on Independent Living; American Association of People with Disabilities; over one hundred forty individuals; and form letters from over sixty individuals. Your Committee received comments on this measure from The Queen's Health Systems and two individuals.

Your Committee finds that medical aid in dying is a medical practice in which a mentally capable, terminally ill adult with less than six months to live may request a prescription for a medication that the terminally ill adult can self-administer to achieve death. According to testimony received by your Committee, up to fifty-one percent of patients experience pain at the end of life. The prevalence of pain has been noted to increase significantly in the last four months of life, with breakthrough pain - severe pain that erupts while a patient is already medicated with a long-acting painkiller - remaining a challenge for many patients. Furthermore, while hospice and palliative care are widely available and may be an excellent option for some, care provided through these methods is still within the control of a health care provider, not a terminally ill patient who may wish for the freedom to make the patient's own end-of-life decisions.

Your Committee further finds that numerous polls from a variety of national and state sources demonstrate that the



American public is in favor of this end-of-life care option, with this majority support encompassing a variety of demographic groups, including ethnicity, education level, and religion. According to testimony received by your Committee, a 2016 poll found that eighty percent of registered Hawaii voters support medical aid in dying.

Your Committee notes that this measure is based on Oregon's groundbreaking Death with Dignity Act, which has been in effect for over twenty years and was enacted during a time when no other state authorized the medical practice of aid in dying. Since that time, California, Colorado, Vermont, Washington, and the District of Columbia have evaluated Oregon's experience and have enacted similar legislation. Your Committee additionally finds that medical aid in dying is a safe and trusted practice. In the states and territory that have authorized the practice, there has not been a single documented instance of coercion or abuse. The laws in these other states and territory are working as intended. Furthermore, rather than posing a risk to patients or the medical profession, Oregon's Death with Dignity Act has galvanized significant improvements in the care of the state's terminally ill and dying. According to testimony received by your Committee, when Oregonian physicians were surveyed on their efforts to improve end-of-life care, since the enactment of Oregon's Death with Dignity Act, thirty percent of respondents increased referrals to hospice care, while seventy-six percent made efforts to improve their knowledge of pain management. Furthermore, hospice nurses and social workers surveyed in Oregon observed an increase in physician knowledge of palliative care and willingness to refer to hospice.

Your Committee also finds that the availability of the option of medical aid in dying gives a terminally ill individual autonomy, control, and choice. Your Committee notes that this choice is the overwhelming motivational factor behind the decision to request assistance in dying. A terminally ill individual who seeks medical aid in dying may ultimately not choose to exercise this option; however, the mere availability of such a choice can bring comfort to people in their final days.

Your Committee further finds that any medical aid in dying legislation must include proper safeguards that prevent abuse and coercion. In order for any medical aid in dying option to truly



be a choice, it must not be the only option. Accordingly, this measure includes numerous, robust safeguards that protect against abuse and coercion and promote choice. This measure establishes strict eligibility criteria and guidelines that meet the highest standard of care for the medical practice of aid in dying, as described in clinical criteria published in the Journal of Palliative Medicine. Under this measure, to be eligible for aid-in-dying medication, adults must have a medically confirmed terminal disease that will, within reasonable medical judgment, result in death within six months, and be mentally capable of making their own health care decisions. Importantly, this measure clearly states that no person shall qualify for medical aid in dying solely based on age or disability.

This measure also has core safeguards that require the attending provider to inform terminally ill adults about other feasible alternatives or additional treatment options, including comfort care, hospice care, and pain control; require a second provider to confirm the terminal diagnosis, prognosis, and mental capability; require counseling to ensure the patient is capable and does not appear to be suffering from undertreatment or nontreatment of depression or other conditions that may interfere with the patient's ability to make an informed decision; and require the terminally ill adult to make two verbal and one written request, signed by two witnesses. In keeping with the overarching theme of choice, this measure clearly states that a qualified patient may rescind a request at any time and in any manner. Furthermore, providers may not write a prescription for medication under this measure without offering a qualified patient the opportunity to rescind a request.

Your Committee notes that this measure offers terminally ill patients a meaningful option as part of the State's already-robust continuum of palliative and hospice care. Your Committee also notes that according to testimony from the Department of the Attorney General, there is no serious constitutional impediment to this measure as it is currently drafted.

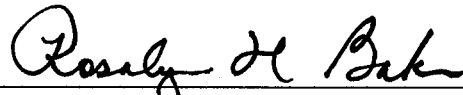
Finally, your Committee notes that this country's social institutions are based on the premises that its citizens are rational, independent, and free, possess autonomy, and are aware of their own self-interests. As all people deserve the respect to live their lives with dignity, your Committee does not believe it



is appropriate to disregard this principle of individual liberty and self-determination when life approaches its inevitable end. Your Committee therefore concludes that a terminally ill person's end-of-life choices are deeply personal, private matters that should be left to the patient, the patient's family, and the patient's attending provider. Accordingly, this measure permits mentally capable, terminally ill adults in Hawaii to have the choice and autonomy to make informed decisions regarding their end-of-life care.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2739, H.D. 1, and recommends that it pass Second Reading and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



