Testimony of Donna Smith, State Director, Compassion & Choices
Regarding SB 845, In Support ofThe End–of–Life Option Act
Honorable Elijah E. Cummings and the Honorable Shane E. Pendergrass Act
Maryland Senate Judicial Proceedings Committee
March 7, 2023

Introduction

Good morning Chair Smith and Vice Chair Waldstreicher,. I am grateful to be back before this committee, hopeful that this year we will realize a more compassionate end of life for residents of Maryland by passing the Honorable Elijah E. Cummings and the Honorable Shane E. Pendergrass Act (SB 845)

My name is Donna Smith. I was a Maryland resident for the last 20 plus years, living in Prince Georges and Anne Arundel County MD.

I am also the advocacy director of Compassion & Choices and the Compassion & Choices Action Network. We are the nation's oldest and largest consumer-based nonprofit organization working to improve care and expand options at life's end. We advocate for legislation to improve the quality of care for terminally ill patients and affirm their right to determine their own medical treatment options as they near the end of life.

What is Medical Aid in Dying?

Medical aid in dying refers to a practice in which a mentally capable, terminally ill adult may request from their medical provider a prescription for a medication that they can self-ingest to die peacefully if their suffering becomes unbearable. Ten states, Oregon, Washington, Vermont, California, Colorado, Hawaii, New Jersey, Maine, Montana, New Mexico, as well as the District of Columbia, have authorized the compassionate option of medical aid in dying. Seven of these jurisdictions authorized this end-of-life care option within the past seven years (2015-2022). Today, more than one in five people have access to this end-of-life care option.

Most notably, the dying person is in charge of the process from start to finish, and must be able to self-ingest the medication. Two doctors must confirm that the adult is mentally capable, has a medical prognosis of six months or less to live and is not being coerced. There are also more than a dozen additional regulations. All of these regulations are in addition to the education, training and oversight that governs the practice of medicine for any medical procedure.

Medical aid in dying is also entirely optional -- for both the doctor and the patient. Nobody is forced to participate, and the availability of the option brings people comfort during the most difficult time of life.

Public Support for Medical Aid in Dying is Strong

Public opinion polling from a variety of sources, both nationally and at the state level, demonstrates that the American public consistently supports medical aid in dying, with

majority support among nearly every demographic group. A 2020 Gallup poll found that 61% of participants support medical aid in dying. Majority support spanned a variety of demographic groups, including 60% of people of color.[1] Research conducted in 2023 of registered voters in Maryland found that 71% support medical aid in dying.[2]

Support for Medical Aid in Dying is Also Strong Within the Medical Community

Physicians nationwide support medical aid in dying. According to the Life, Death, and Painful Dilemmas: Ethics 2020 survey released by Medscape in November 2020, more than a majority of physicians support medical aid in dying, and this support has grown by nine percentage points over the past decade (from 47 to 55%).[3] Notably, physician opposition to medical aid in dying has plunged by 13 percentage points over the same time period (from 41% to 28%).

Most of the medical associations in authorized jurisdictions currently have neutral positions on medical aid in dying, including Oregon[4], California[5], Colorado[6], Vermont,[7] Maine,[8] New Mexico[9], and the District of Columbia[10].

There is growing recognition within the medical profession that patients want, need and deserve this compassionate option at the end of life; and this growing recognition is burgeoning into collaboration. As more jurisdictions authorize medical aid in dying, the

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[1] Susquehanna Polling & Research, Inc. USA Omnibus - Cross Tabulation Report, November 2021 (see pages 18-19). Availavle at: https://compassionandchoices.org/docs/default-source/default-document-library/usa-omnibus-cross-tabulation-report-final-november-2021-2.pdf?sfvrsn=74705b4b_1

[2] Gonzales Maryland Poll – January 2023 Results. Available at: https://compassionandchoices.org/docs/default-source/maryland/compassion-and-choices---gonzales-maryland-poll-january-2023.pdf?sfvrsn=ecbc7e23_1

[3] Leslie Kane. Life, Death, and Painful Dilemmas: Ethics 2020 https://compassionandchoices.org/docs/default-source/fact-sheets/medscape-ethics-report-2020-life-death-and-pain.pdf

[4] Oregon Medical Association. Available from https://oma.informz.net/informzdataservice/onlineversion/ind/bWFpbGluZ2luc3RhbmNlaWQ9NjU0Mzk3MSZzdWJzY3JpYmVyaWQ9ODc4MzYwNjk3.

[5] California Medical Association. Excerpted from: CMA changes stance on physician aid in dying, takes neutral position on End of Life Option Act. June 2, 2015. Available at https://www.cmadocs.org/newsroom/news/view/ArticleId/26466/CMA-changes-stance-on-physician-aid-in-dying-takes-neutral-position-on-End-of-Life-Option-Act.

[6] Colorado Medical Society, Statement by CMS President-elect Katie Lozano, MD, FACR, regarding Ballot Proposition 106. Available from: https://www.cms.org/about/policies#170-ethics

[7] *Vermont Medical Society, Position on Medical Aid in Dying,* (2017). Available from: http://www.vtmd.org/sites/default/files/2017End-of-Life-Care.pdf

[8] MMA Board Withdraws Opposition to Death with Dignity Legislation. May 1, 2017, http://newsmanager.commpartners.com/mainemed/issues/2017-05-01/index.html

[9] *New Mexico Medical Society Council Meeting Minutes 1.5.19* http://bit.ly/2GhwbIO

[10] *Another State Medical Society Stops Fighting Assisted Death* (2017). Lowes, Robert. Medscape. Available from: https://www.medscape.com/viewarticle/889450?reg=1&icd=login_success_gg_match_norm

medical community is coming together, and providers are sharing their experiences and fine-tuning their collaborative efforts to better serve dying patients.

A Solid Body of Evidence

When crafting medical aid-in-dying legislation, lawmakers no longer need to worry about hypothetical scenarios or anecdotal concerns. We now have 25 years of data since Oregon first implemented its law in 1997, and years of experience from the 10 other authorized jurisdictions, including annual statistical reports from nine jurisdictions. The most relevant data — namely, those relating to the traditional and more contemporary concerns that opponents of legalization have expressed — do not support and, in fact, dispel the concerns of opponents."[11] None of the dire predictions that opponents raised have come to fruition. In fact, there has never been a single substantiated case of misuse or abuse of the laws. The evidence confirms that medical aid-in-dying laws protect patients while offering a much-needed compassionate option.

Currently, public health departments in nine authorized jurisdictions have issued reports regarding the utilization of medical aid-in-dying laws: Oregon,[12] Washington,[13] Vermont[14] California,[15] Colorado,[16] Hawaii,[17] the District of Columbia,[18] Maine,[19] New Jersey[20]. The following data from those jurisdictions addresses the most common inaccurate claims about medical aid in dying and sets the record straight. More detailed reports can be provided upon request.

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[11] *A History of the Law of Assisted Dying in the United States.* SMU Law Review, A. Meisel, (2019) Available from: https://scholar.smu.edu/cgi/viewcontent.cgi?article=4837&context=smulr
[12] *Oregon Death with Dignity Act Annual Report* (2021) Available from: https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year24.pdf
[13] *Washington Death with Dignity Act Annual Report* (2020) Available from: https://doh.wa.gov/sites/default/files/2022-02/422-109-DeathWithDignityAct2020.pdf?uid=634756e5baf15
[14] *Vermont Patient Choice at the End of Life Data Report* (2020) Available from: https://legislature.vermont.gov/assets/Legislative-Reports/2020-Patient-Choice-Legislative-Report-2.0.pdf
[15] *California End of Life Option Act Annual Report (*2021) Available from: https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/CDPH_End_of_Life%20_Option_Act_Report_2021_FINAL.pdf
[16] *Colorado End of Life Options Act Annual Report* (2021) Available from: https://drive.google.com/file/d/1IBp-r-KSjEI9IYdHIx5bLA9dTBB81GlM/view?usp=sharing
[17] *Hawaii Our Care, Our Act Annual Report* (2021) Available from: https://health.hawaii.gov/opppd/files/2022/07/corrected-MAID-2021-Annual-Report.pdf
[18] *District of Columbia Death with Dignity Act Annual Report (*2018) Available from: https://dchealth.dc.gov/sites/default/files/dc/sites/doh/page_content/attachments/DWD%20Report%202018%20Final%20%20%208-2-2019.pdf
[19] *Maine Patient Directed Care at End of Life Annual Report* (2021) Available from: https://legislature.maine.gov/doc/8664
[20] *New Jersey Medical Aid in Dying for the Terminally Ill Act* (2021) Available from: https://nj.gov/health/advancedirective/documents/maid/2021.pdf

- Cumulatively, for the past 20+ years, across all jurisdictions, 10,025 individuals have received aid-in-dying medication, and 6,378 people have taken the prescription to end their suffering.[21]
- Just over a third of people (37%) who go through the process and obtain the prescription never take it. However, they derive peace of mind simply from knowing they would have the option if their suffering became too great. Fewer than 1% of the people who die in each jurisdiction use the law each year.[22]
- Fewer than 1% of the people who die in each state will decide to use the law each year.
- The majority of terminally ill people who use medical aid in dying — more than 87% — received hospice services at the time of their deaths, according to annual reports for which hospice data is available.
- There is nearly equal utilization of medical aid in dying among men and women. There is no data on utilization of medical aid in dying by non-binary people.
- Terminal cancer accounts for the vast majority of qualifying diagnoses, with neurodegenerative diseases such as ALS or Huntington's Disease following as the second leading diagnosis.
- Just over 90% of people who use medical aid in dying are able to die at home. According to various studies, most Americans would prefer to die at home.[23]

Medical Aid in Dying Protects Patients

The evidence is clear: medical aid-in-dying laws protect terminally ill individuals, while giving them a compassionate option to die peacefully and ensuring appropriate support and legal protection for the care providers who practice this patient-driven option. SB 845 contains the same time-tested, evidence-based safeguards that have protected patients in other authorized jurisdictions.

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[21] *Medical Aid-in-Dying Data Across Authorized States, 2023*. Compassion & Choices. Available from: https://compassionandchoices.org/docs/default-source/default-document-library/medical_aid_in_dying_utilization_report_12-13-2022.pdf?sfvrsn=697faeca_2

[22] According to the Center for Disease Control, in 2019 in jurisdictions that authorized medical aid in dying, 427,296 people died in total. In 2019, authorized jurisdictions report 1,027 people died after being provided with a prescription for medical aid in dying–less than 0.002% of all total deaths in 2019. Center for Disease Control, *Deaths: Final Data for 2019*, July 26, 2021. Available from: https://stacks.cdc.gov/view/cdc/106058/cdc_106058_DS1.pdf

[23] Kaiser Family Foundation, Views and Experiences with End-of-Life Medical Care in the U.S., April 27, 2017. Available from: https://www.kff.org/report-section/views-and-experiences-with-end-of-life-medical-care-in-the-us-findings/

There have been no documented or substantiated incidents of abuse or coercion across the authorized jurisdictions since Oregon implemented the first medical aid-in-dying law on Oct. 27, 1997. A 2015 report from the Journal of the American Academy of Psychiatry and Law noted "there appears to be no evidence to support the fear that assisted suicide [medical aid in dying] disproportionately affects vulnerable populations."[24] Vulnerable groups included the "elderly, women, the uninsured, people with low educational status, the poor, the physically disabled or chronically ill, minors, people with psychiatric illnesses, including depression, or racial or ethnic minorities, compared with background populations."[25]

For Some, Comfort Care and Pain Management Is Not Enough

Terminally ill people who request medical aid in dying do not request it because hospice or palliative care has failed to provide the best symptom control available. In fact, the vast majority of individuals who use medical aid in dying are also receiving hospice and palliative care.[26] Good hospice services and palliative care do not eliminate the need for medical aid in dying as an end-of-life care option. Terminally ill people should have a full range of end-of-life care options, whether for illness-specific treatment, palliative care, refusal of life-sustaining treatment or the right to request medication the patient can decide to take to shorten a prolonged and difficult dying process. Only the dying person can know whether their pain and suffering is too great to withstand. The option of medical aid in dying puts the decision-making power where it belongs: with the dying person.

What we hear directly from terminally ill individuals is that people decide to use the law for multiple reasons all at once: pain and other symptoms such as breathlessness and nausea, loss of autonomy, loss of dignity. It is not any one reason, but rather it is the totality of what happens to one's body at the very end of life. For some people, the side effects of treatments such as chemotherapy or pain medication (sedation, relentless nausea, crushing fatigue, obstructed bowels, to name a few), are just as bad as the agonizing symptoms of the disease. For others, they want the option of medical aid in dying because they want to try that one last, long-shot treatment with the peace of mind

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[24] Gopal, AA. 2015. Physician-Assisted Suicide: Considering the Evidence, Existential Distress, and an Emerging Role for Psychiatry. Journal of the American Academy of Psychiatry and the Law. Vol 43(2): 183-190. Available from: http://jaapl.org/content/43/2/183

[25] Margaret P Battin, Agnes van der Heide, Linda Ganzini, Gerrit van der Wal, Bregje D Onwuteaka-Philipsen. Legal physician-assisted dying in Oregon and the Netherlands: evidence concerning the impact on patients in "vulnerable" groups. Journal of Medical Ethics, Volume 33, Issue 10, 2007. Available from: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2652799/

[26] By compiling the data from each authorized jurisdiction's annual reports and aggregating that over all years, we arrived at these numbers. Medical Aid-in-Dying Utilization Report (2023) Available from: https://compassionandchoices.org/docs/default-source/default-document-library/medical_aid_in_dying_utilization_report_12-13-2022.pdf?sfvrsn=697faeca_2

of knowing that if it results in unbearable suffering, they have an option to peacefully end it.

Only the dying person can determine how much pain and suffering is too much. This law puts the decision in the hands of the dying person, in consultation with their doctor and loved ones, as it should be for such deeply personal healthcare decisions.

Support in Maryland
We are also seeing growing support for passage of this legislation in Maryland. We have increased our supporters to nearly 17,000 and we have increased our bill co-sponsors to 68, more than one-third of the legislature. This bill has been endorsed by United Seniors of Maryland, the ACLU, the Unitarian Universalist Church, Central Atlantic Conference of the United Church of Christ, and the Libertarian Party of Maryland.

Maryland lawmakers have a rare trifecta with this bill:

(1) Widespread public support;
(2) Conclusive data that it will improve end of life care; and
(3) Minimal cost to implement

I urge our Maryland lawmakers to let the evidence, data and strong public support for this end-of-life care option guide your policymaking.

In Conclusion
On behalf of the 73 percent of Maryland residents who support this option, I urge you to pass the End of Life Option Act this year. On behalf of those we have already lost waiting for this bill to be enacted, and on behalf of their families and loved ones who suffer with them, I urge you to pass this bill *now*.

Regardless of whether you would choose the option for yourself, please don't deprive others of the peace of mind and comfort of medical aid in dying.

Terminally ill Maryland residents don't have the luxury of endless deliberations; they need the relief that this law affords them right now. Thank you.

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