Medical Aid-in-Dying (MAID) Interim Report

Joint Commission on Health Care

August 22, 2017 Meeting

Michele Chesser, Ph.D., Executive Director

* I would like to thank Meagan D. Sok, JCHC Intern, for her work on this study

Study Mandate

- Delegate Kaye Kory requested via letter that the JCHC study the issue of Medical Aid-in-Dying (MAID). The delegate asked that the study include a review of states that currently authorize MAID and address the following questions:
  - What has been the impact of informing patients about end-of-life options such as hospice care and palliative care?
  - In current MAID states, how have the following acted to implement the law?
    - Health care providers
    - Health care systems
    - Health care institutions
  - In current MAID states, have people been coerced to ingest end-of-life medication?
    - Have any of the states enacted protections to discourage or prevent coercion?
  - Has the implementation of the law impacted any state's health care costs?
  - Using data from states that allow medical aid-in-dying, how many people would likely utilize medical aid-in-dying if it became law in Virginia?
- JCHC members approved the study during the Commission's May 23, 2017 work plan meeting

MAID Study Work Group

- A work group was created to discuss Medical Aid-in-Dying and consider components of the statute that will be one of the policy options
- Meeting 1: July 25, 2017
  - Overview of issue presented by Dr. Chesser
  - Discussion of MAID
- Meeting 2: August 25, 2017
  - Discussion of policy options and statute components
- Meeting 3: TBD
  - Discussion of statute components

MAID Study Work Group

- ALS Association
- American Cancer Society
- American Lung Association
- Anthem
- Bon Secours
- Capital Caring
- Carilion
- Compassion and Choices
- DARS
- DBHDS
- DHP
- DisAbility Law Center
- DMAS
- Family Foundation
- HCA Healthcare Virginia
- INOVA
- Mary Washington Healthcare
- Medical Society of Virginia
- NAMI
- Office of the Secretary of Health and Human Resources
- Riverside Health System
- Robert Misbin, MD
- Senior Navigator
- Sentara
- Social Worker, Diane Kane
- Society for Critical Care Medicine
- The Arc of Virginia
- University of Virginia
- Virginia Association of Health Plans
- Virginia Commonwealth University Health System
- VDH
- Virginia Association of Health Plans
- Virginia Association for Hospices and Palliative Care
- Virginia Catholic Conference
- Virginia Centers for Independent Living
- Virginia Health Care Association
- Virginia Hospital and Healthcare Association
- Virginia Nurses Association
- Virginia Public Access Project
- Virginia Society for Human Life
- Virginia Trial Lawyer Association

Definition of Medical Aid-in-Dying

- The ability of a patient to obtain a medication to end their life if they are competent, terminally ill, and over 18 years of age
- The ability of a physician to prescribe a medication that will allow a competent, terminally ill individual over the age of 18 to end their life
- Some individuals/organizations prefer to use terms like assisted suicide
  - However, different legal definition with implications if worded as such in Virginia statute

Current Virginia Statute

- **§ 8.01-622.1. Injunction against assisted suicide; damages; professional sanctions**.
- A. Any person who knowingly and intentionally, with the purpose of assisting another person to commit or attempt to commit suicide, (i) provides the physical means by which another person commits or attempts to commit suicide or (ii) participates in a physical act by which another person commits or attempts to commit suicide shall be liable for damages as provided in this section and may be enjoined from such acts.
- B. A cause of action for injunctive relief against any person who is reasonably expected to assist or attempt to assist a suicide may be maintained by any person who is the spouse, parent, child, sibling or guardian of, or a current or former licensed health care provider of, the person who would commit suicide; by an attorney for the Commonwealth with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the person from assisting any suicide in the Commonwealth.
- C. A spouse, parent, child or sibling of a person who commits or attempts to commit suicide may recover compensatory and punitive damages in a civil action from any person who provided the physical means for the suicide or attempted suicide or who participated in a physical act by which the other person committed or attempted to commit suicide.

Emphasis added

Current Virginia Statute, Continued

- **D. A licensed health care provider who assists or attempts to assist a suicide shall be considered to have engaged in unprofessional conduct for which his certificate or license to provide health care services in the Commonwealth shall be suspended or revoked by the licensing authority.**
- E. Nothing in this section shall be construed to limit or conflict with § 54.1-2971.01 or the Health Care Decisions Act (§ 54.1-2981 et seq.). This section shall not apply to a licensed health care provider who (i) administers, prescribes or dispenses medications or procedures to relieve another person's pain or discomfort and without intent to cause death, even if the medication or procedure may hasten or increase the risk of death, or (ii) withholds or withdraws life-prolonging procedures as defined in § 54.1-2982. This section shall not apply to any person who properly administers a legally prescribed medication without intent to cause death, even if the medication may hasten or increase the risk of death.
- F. For purposes of this section:
- "Licensed health care provider" means a physician, surgeon, podiatrist, osteopath, osteopathic physician and surgeon, physician assistant, nurse, dentist or pharmacist licensed under the laws of this Commonwealth.
- "Suicide" means the act or instance of taking one's own life voluntarily and intentionally.
- 1998, c. 624; 2015, c. 710.

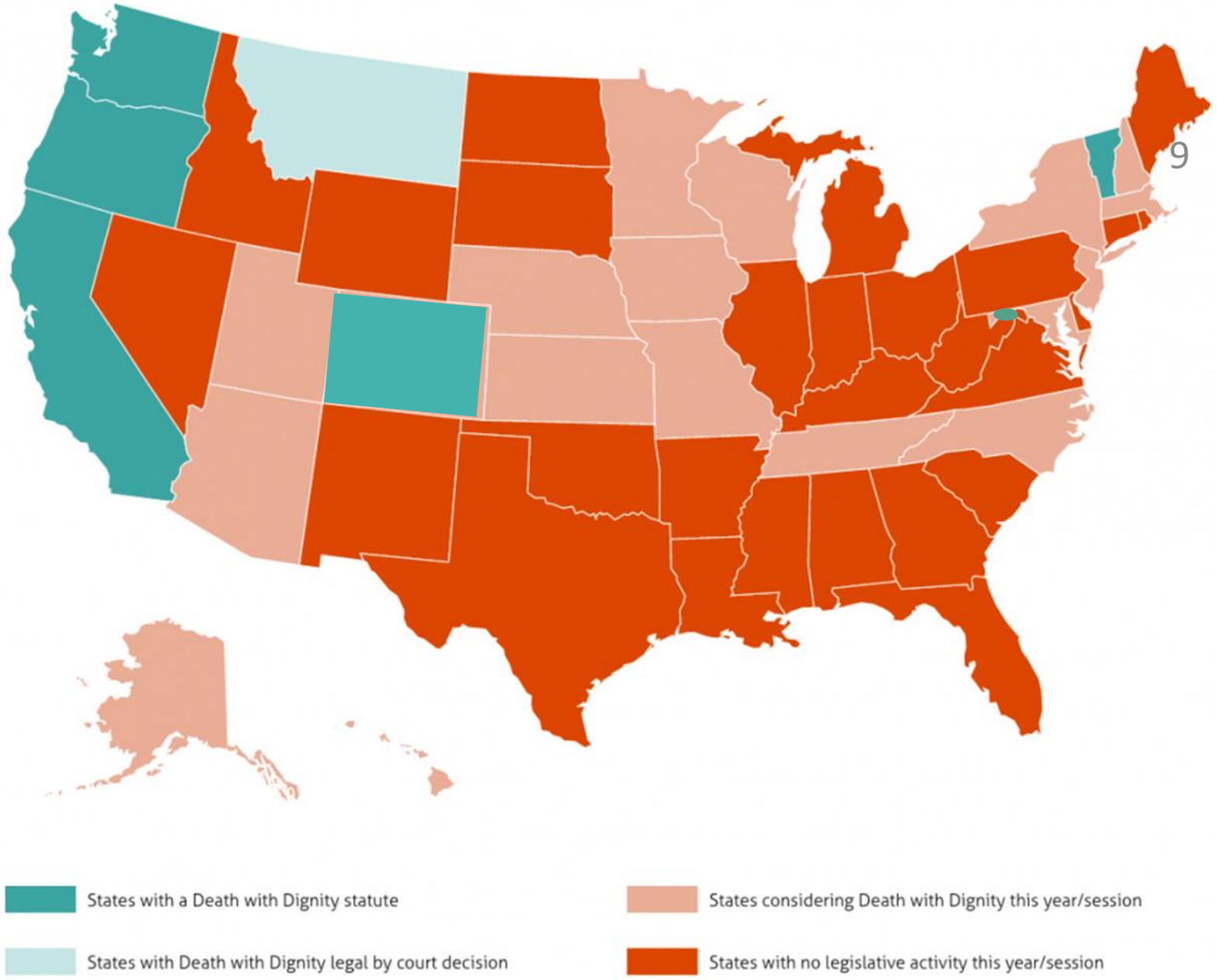
Emphasis added

Existing Medical Aid-in-Dying Statutes

MAID – U.S. Landscape

States with MAID Laws:
Oregon (1998)
Washington (2008)
Vermont (2013)
California (2016)
Colorado (2016)
Washington, D.C. (2017)

***By Judicial Review, legal in Montana (2009):**
Nothing in the state law prohibits MAID. Physicians cannot be prosecuted so long as the patient is competent, terminally ill, at least 18 years of age and acting voluntarily



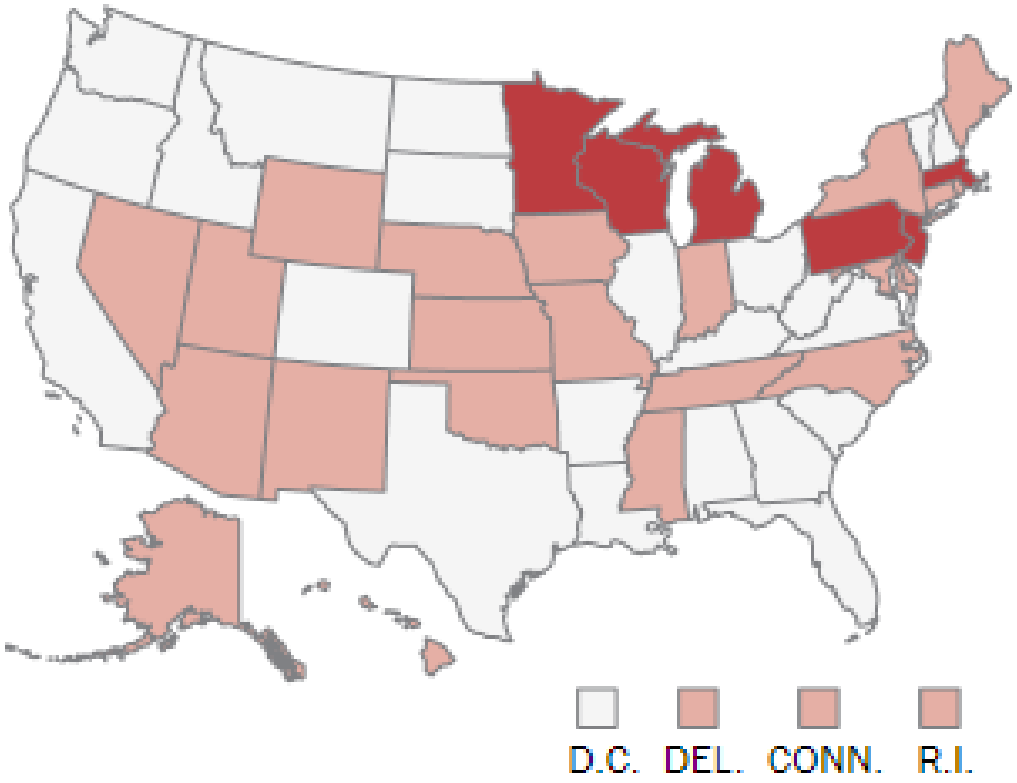
https://www.deathwithdignity.org/news/2016/03/state-progress/

2017 State Actions

Efforts to legalize physician-assisted death

Court cases and bills introduced in 2017:

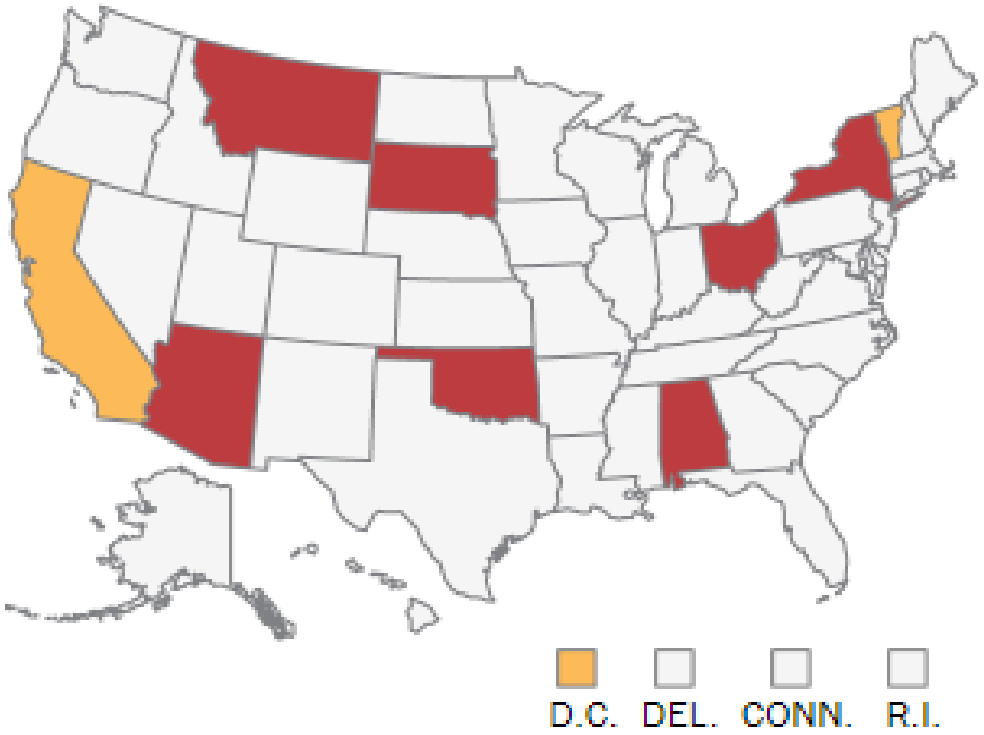
ACTIVE **FAILED**



Efforts to limit, ban or criminalize physician-assisted death

In states where it is now:

LEGAL **ILLEGAL**



Status of bills and court cases as of July 2017. Source: https://www.nytimes.com/2017/08/05/opinion/sunday/dying-doctors-palliative-medicine.html

Generally, Existing MAID Statutes Include:

Eligibility Criteria:

- Adult, 18 years of age and older
- Resident of the state
- Suffer from a terminal illness
- Able to self-administer the medication

Requires physician provide the following to the patient:

1. Diagnosis with prognosis
2. Range of options including palliative care and hospice care
3. Risks and probable death from prescription

Process:

- Attending and consulting physicians determine and agree that the patient suffers from a terminal disease with less than six months to live.
- Patient must provide 2 voluntary oral requests no less than 15 days apart.
- Patient must provide a signed written request (form provided) for the medication, co-signed by 2 witnesses
- Physician to provide prescription at least 15 days after the initial oral request and at least 48 hours after the signed request.
- Before providing the prescription, the physician must confirm the patient has not rescinded the request and remind the patient that the patient is not required to ingest the medication.
- If either physician believe the patient is suffering from depression or any behavioral health condition that may be impacting their choice, they are to refer the patient to a psychiatrist before proceeding.
- For prescription: After obtaining patient approval, attending physician calls pharmacy to alert pharmacist of the prescription to be filled and sends the written prescription through specified means.
- When ingesting, patient must self-administer the medication.

Oregon (1998 Statute)

- Eligibility: Oregon resident, determined by attending and consulting physician to have a terminal disease, and voluntarily expressed wish to die
- Consulting physician shall examine the patient and relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is capable, is acting voluntarily and has made an informed decision.
- Counseling: If either physician believes the patient may have a mental health disorder (including depression) causing impaired judgement, the physician may refer the patient for counseling. Medication can only be prescribed if the counselor determines that the patient does not have impaired judgement resulting from a mental health condition
- Patient Request: Patient must provide two oral requests no less than 15 days apart, and a written request witnessed by two people
  - Prescription cannot be provided less than 15 days from initial oral request and less than 48 hours after written request

Oregon (1998 Statute) Continued (2)

- Witnesses: Must attest that to the best of their knowledge the patient is capable, acting voluntarily, and is not being coerced to sign the request. One of the witnesses shall be a person who is **not**:
  - A relative of the patient by blood, marriage or adoption;
  - A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or
  - An owner, operator or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.
- The patient's attending physician at the time the request is signed shall **not** be a witness
- If the patient is in a long term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the Department of Human Services

Oregon (1998 Statute) Continued (3)

- Informed Decision: The attending physician, to ensure that the patient is making an informed decision, shall inform the patient of:
  - His or her medical diagnosis and prognosis
  - The potential risks associated with taking the medication to be prescribed
  - The probable result of taking the medication to be prescribed
  - The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control
  - Immediately prior to writing the prescription for medication, the attending physician must verify that the patient is making an informed decision
- The attending physician also shall:
  - Recommend the patient notify next of kin
  - Counsel the patient about the importance of having another person present when the patient takes the medication and of not taking the medication in a public place (e.g. a hotel room, park)
  - Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15 day waiting period
  - Document all steps of the MAID process in the patient's medical record

Oregon (1998 Statute) Continued (4)

- Dispensing of Medication: The physician shall dispense medications directly if he/she is registered as a dispensing physician or, with the patient's consent, contact a pharmacist and inform the pharmacist of the prescription and deliver the written prescription personally or by mail to the pharmacist, who will dispense the medications to either the patient, the attending physician or an expressly identified agent of the patient
- Reporting Requirements: The physician shall fill-out and submit to the Center for Health Statistics required forms when medicine was prescribed (including the dispensing record) and after death. The Department of Human Services shall generate and make publically available an annual statistical report of de-identified, aggregate information.
- Liabilities: Fraud and coercion are a Class A Felony
- Effect on Construction of Wills, Contracts or Statutes:
  - No provision in a contract that would effect whether a person engages in MAID shall be valid.
  - The sale, procurement, issuance or rate of life, health, or accident insurance shall not be effected by MAID. In addition, ending one's life utilizing MAID shall not have an effect upon a life, health, or accident insurance or annuity policy.
  - Nothing in this statute shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with this statute shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law.

Oregon (1998 Statute) Continued (5)

- Immunities and Opting-Out: No one shall be punished for choosing to participate or not participate in MAID. Participation in MAID shall be voluntary. If a health care provider is unable or unwilling to carry out a patient's request the physician can transfer the patient to a new provider (which includes a new physician or new facility)
  - However, a provider (facility/health care system) may prohibit another provider (physician) from participating in MAID on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's policy regarding participating in MAID. If the provider engages in MAID, he/she can receive sanctions within the context of the facility/health care system.
    - Suspension or termination of staff membership or privileges due to prohibited participation in MAID is not reportable under ORS 441.820 and shall not be the sole basis for a report of unprofessional or dishonorable conduct under ORS 677.415 (2) or (3)
  - A health care provider can participate in MAID while acting outside the course and scope of the provider's capacity as an employee or independent contractor; and a patient can contract with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

Oregon (1998 Statute) Continued (6)

- Cause of death on death certificate is the terminal illness
- A request by a qualified individual to an attending physician to provide an aid-in-dying drug shall not provide the sole basis for the appointment of a guardian or conservator.
- Claims by governmental entity for costs incurred: Any governmental entity that incurs costs resulting from a person terminating his or her life in a public place shall have a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim

Statutes: What Other States Have Done Differently

- **Most states and D.C. used the Oregon statute as a blueprint**
- **CA:** The attending physician, consulting physician, or mental health specialist shall not be related to the individual by blood, marriage, registered domestic partnership, or adoption, or be entitled to a portion of the individual's estate upon death
- **VT:** Physician must inform the patient, *in writing*, of their diagnosis, prognosis, and range of treatment options including hospice and palliative care
- **DC:** Inform the patient of the availability of supportive counseling to address the range of possible psychological and emotional stress involved with the end stages of life
- **CO:** Attending physician must confirm no coercion or undue influence by having a private conversation with the patient
- **CA, CO:** As part of informed decision, physician must state the possibility that the patient may choose to obtain the medication but not take it.
- **VT, CA, CO**: Statute does NOT include the following: If the patient is in a long term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the Department of Human Services

Statutes: What Other States Have Done Differently

- **CA:** Attending physician shall give the patient the final attestation form, with the instruction that the form be filled out and executed by the patient within 48 hours prior to taking the medication
- **CA:** Not liable if a person assisted the patient by preparing the medication so long as the person did not assist with the ingestion of the drug
- **CA:** Instructs patient to keep the medication in a safe and secure location until the time that the qualified individual will ingest it
- **CA, WA, VT, CO:** Rules for safe disposal of unused medications
- **CA:** Actions taken in compliance with MAID statute shall not constitute neglect or elder abuse for any purpose of law
- **CO:** An individual utilizing MAID and on Medicaid shall not have their benefits denied or altered
- **CA:** Patient level data shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding
- **VT:** Does not require statistics to be collected for public use

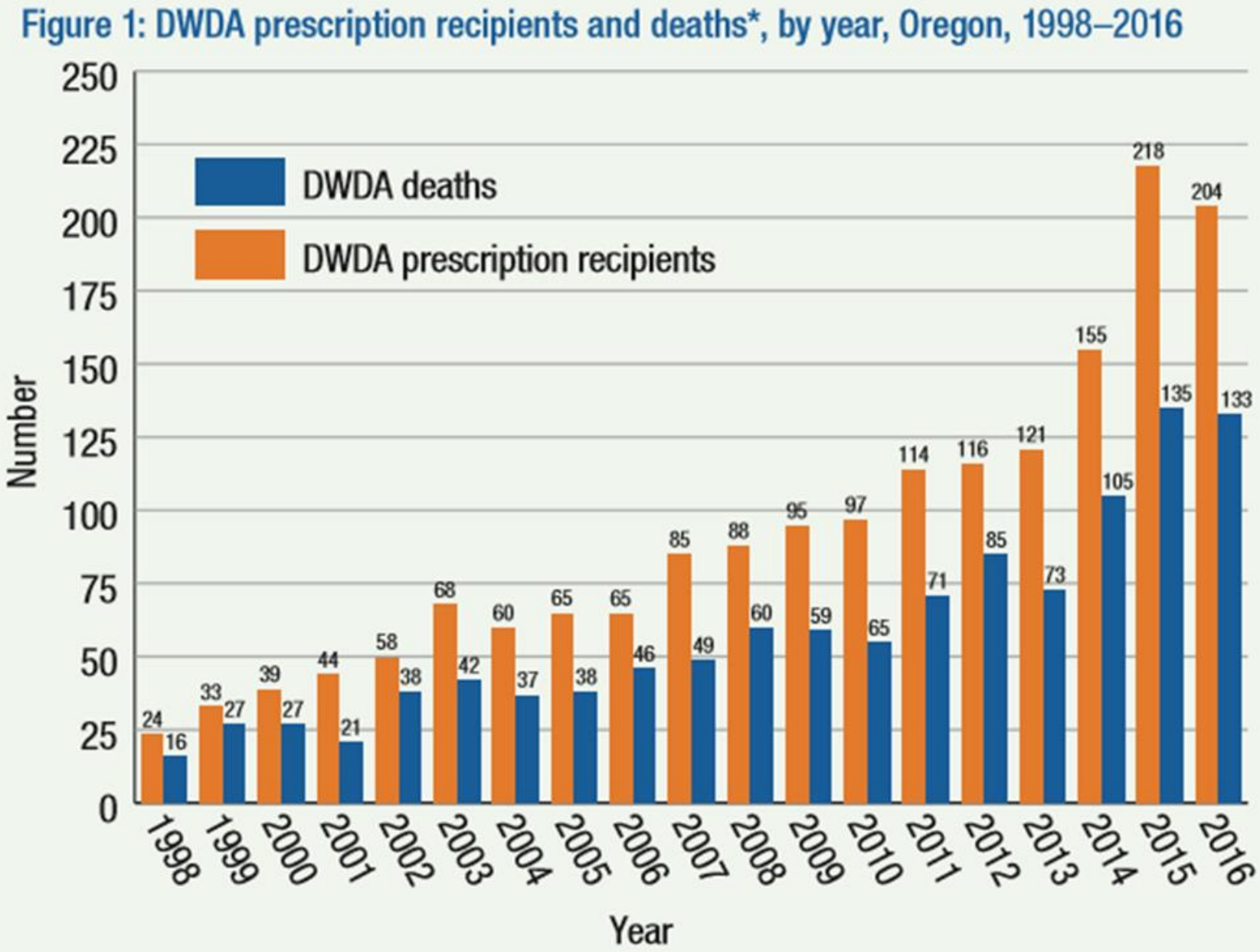
Statutes: What Other States Have Done Differently

- **CA:** Prohibits an insurance carrier from providing any information in communications made to an individual about the availability of an aid-in-dying drug absent a request by the individual or his or her attending physician at the behest of the individual. The bill would also prohibit any communication from containing both the denial of treatment and information as to the availability of aid-in-dying drug coverage.
- **DC:** Death certificate states terminal disease as cause of death, but the Office of the Chief Medical Examiner shall review each death involving a qualified patient who ingests a covered medication and, if warranted by the review, may conduct an investigation.
- **DC:** Mayor shall issue rules to specify the recommended methods by which a patient may notify first responders of his or her intent to ingest a medication; and establish training opportunities for the medical community to learn about the use of covered medications by patients, including best practices for prescribing the medication.

Current Data on MAID

Oregon, Washington and California statutes require that data be collected annually (as does D.C. and Colorado, but no data are available at this point)

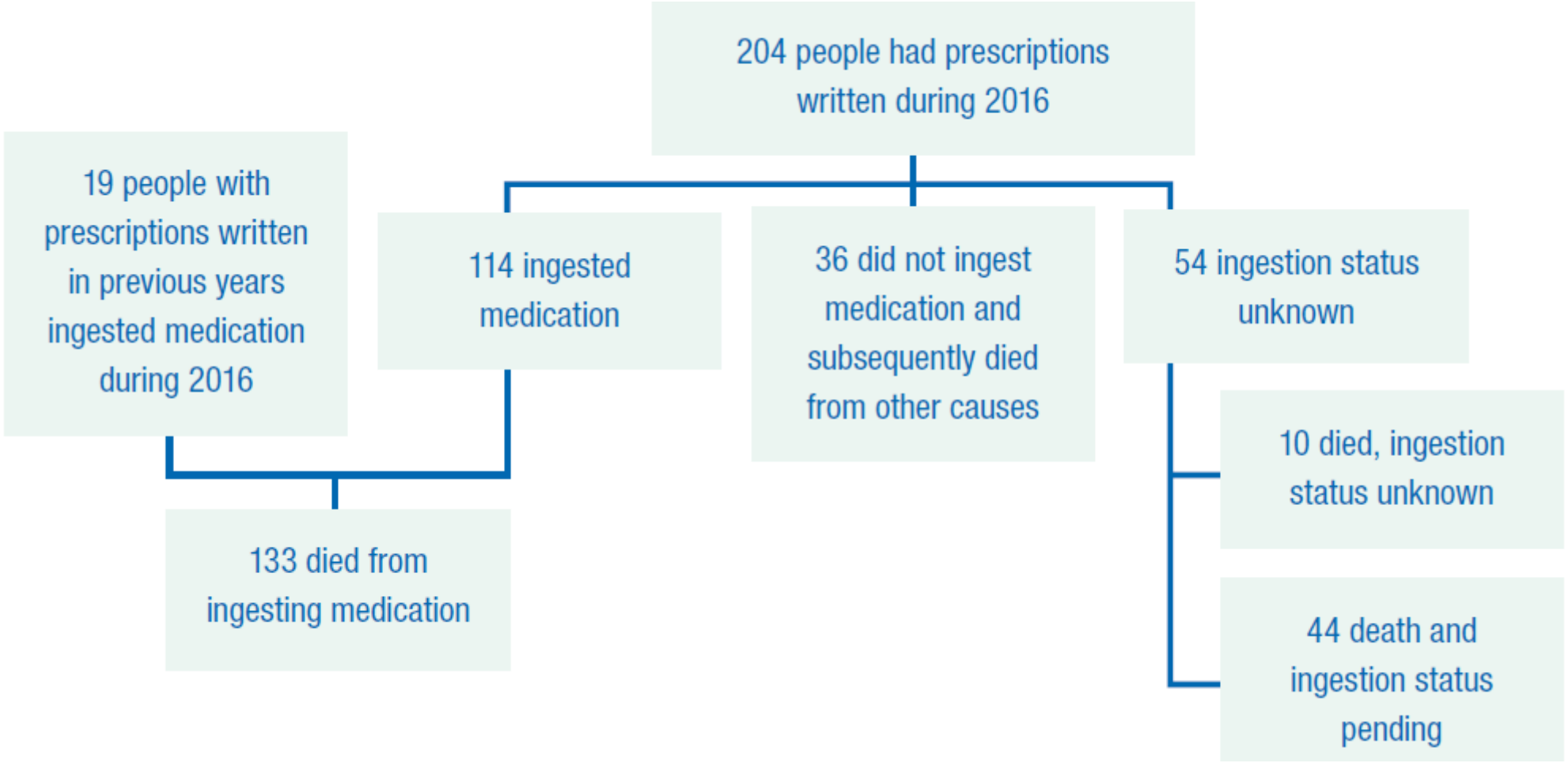
Oregon MAID Utilization Rates



http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year19.pdf

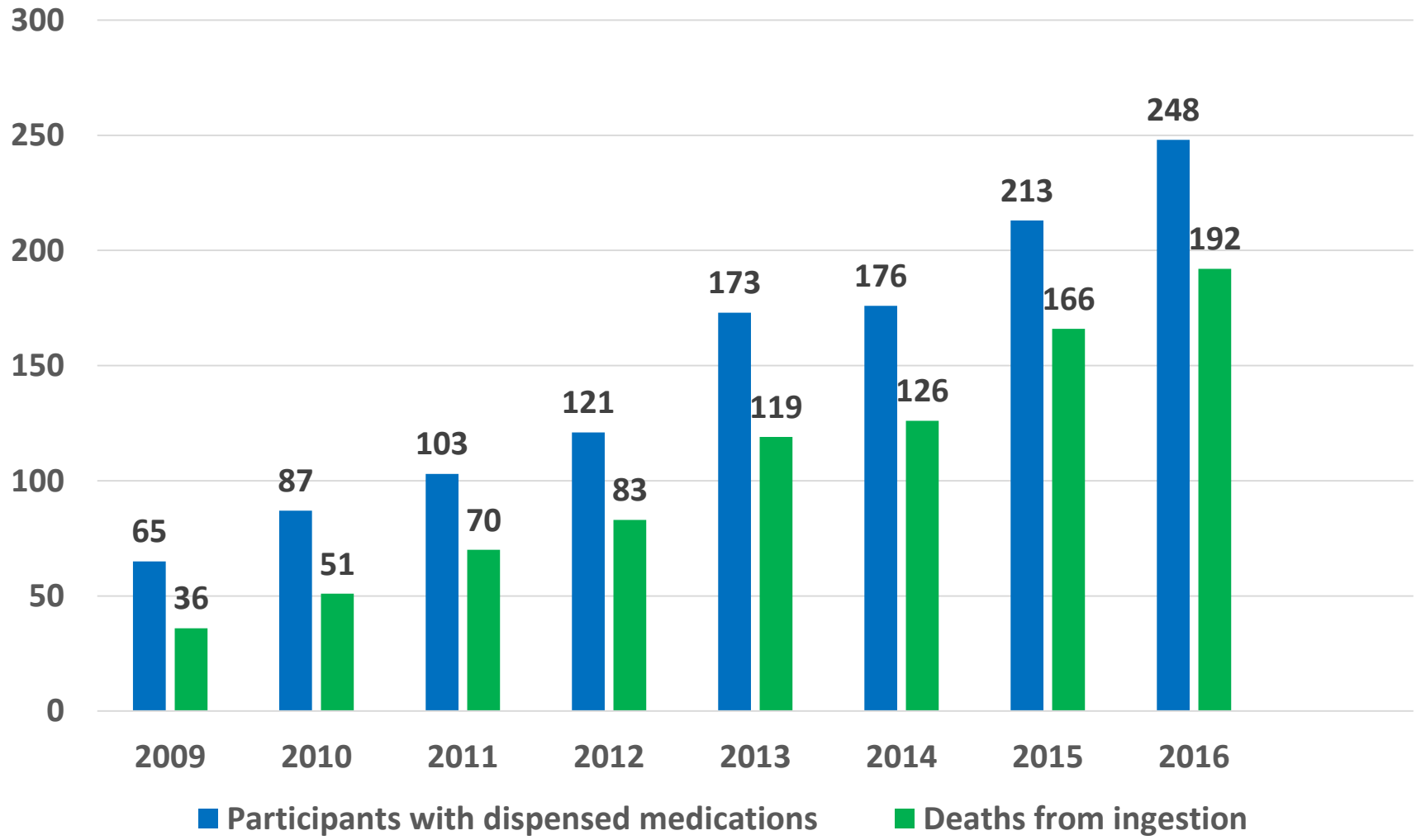
*As of January 23, 2017

Summary of MAID Outcomes: Oregon, 2016



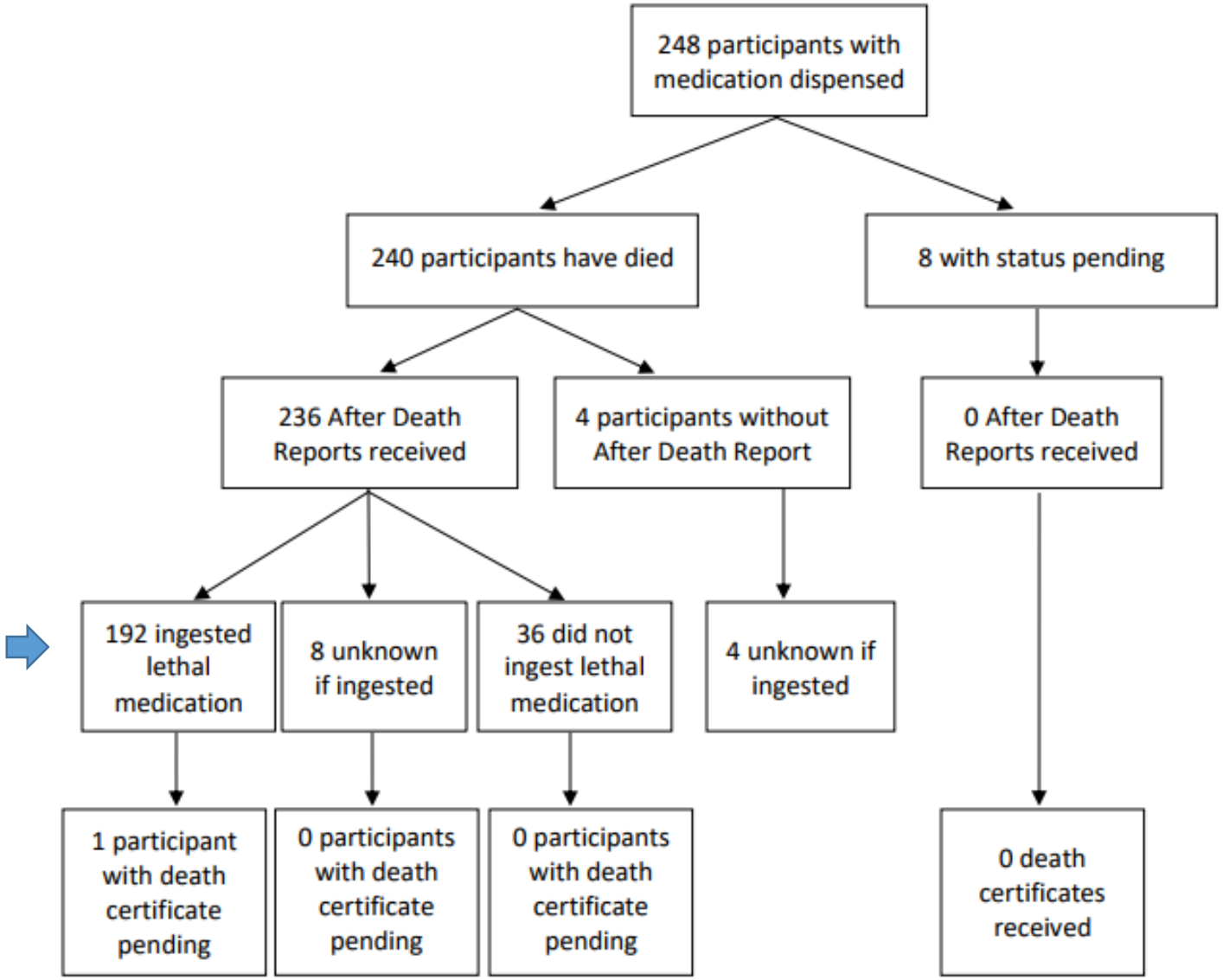
Source: Oregon DWDA 2016 Data Summary

Washington MAID Utilization Rates



Data compiled from Washington's annual DWDA data reports, 2009-2016

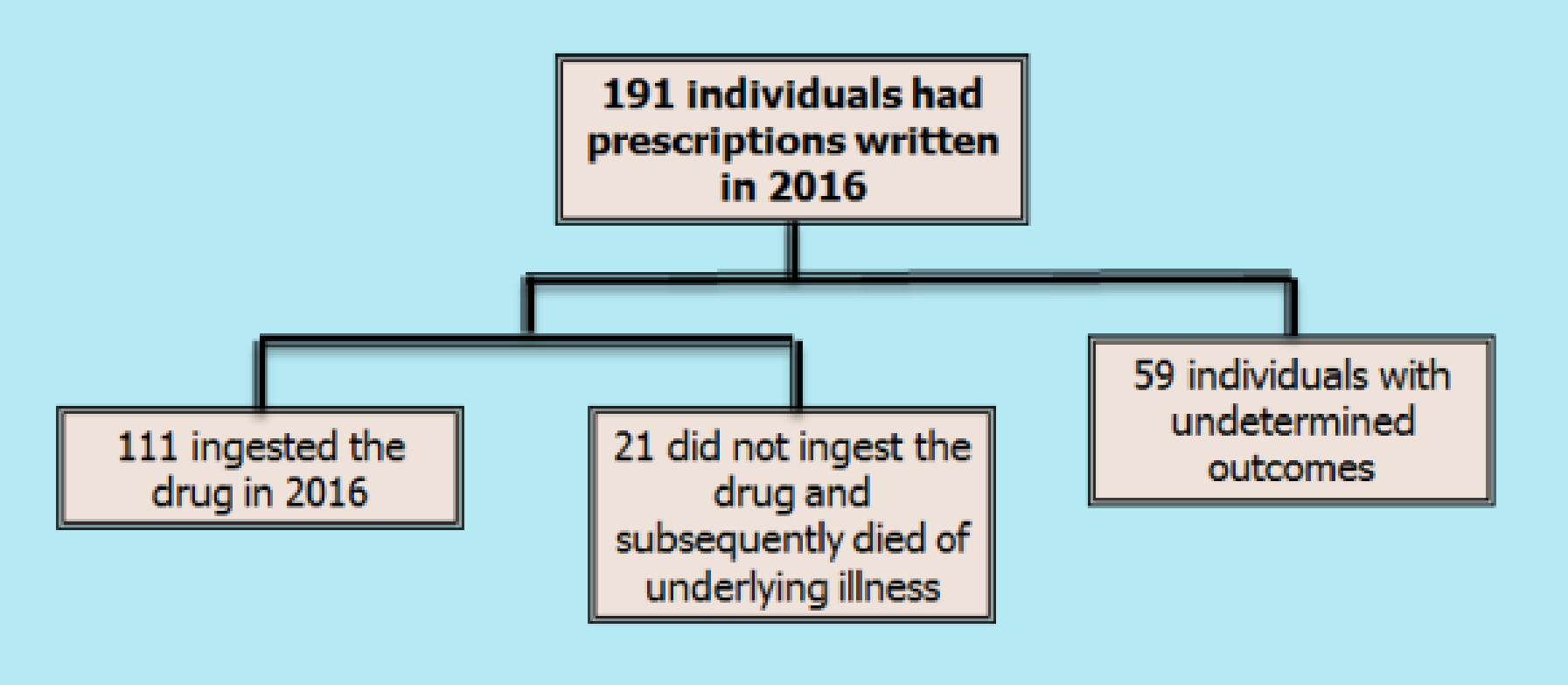
Summary of MAID Outcomes: Washington, 2016



Source: http://www.doh.wa.gov/portals/1/Documents/Pubs/422109-DeathWithDignityAct2016.pdf

Summary of MAID Outcomes: California, 2016

258 individuals made a request for MAID to their physician



Note: California enacted MAID statute in 2016. As a result, all **data is for 6 months**, from June to December of 2016

Source: California EOLO Act 2016 Data Report

2016 MAID Demographics

Oregon: N=133 Washington: N=239 California: N=111 (In 6 months)

SEX (Male)

- Oregon: 72 (54.1%) Washington: 120 (50%) California: 51 (45.9%)

AGE

Oregon		Washington		California	
18-54	8 (6.1%)	18-44	6 (3%)	< 60	14 (12.6%)
55-64	18 (13.5%)	45-64	65 (27%)	60-79	55 (49.5%)
65-84	83 (62.4%)	65-84	126 (53%)	80-89	29 (26.1%)
85	24 (18%)	85	42 (18%)	90 or >	13 (11.7%)

Note: Age categories differ for each state

RACE / ETHNICITY

	Oregon	Washington	California
White	127 (96.2%)	232 (97%)	102 (89.5%)
Black	0	.	3 (2.6%)
Hispanic	2 (1.5%)	.	3 (2.6%)
Asian	2 (1.5%)	.	6 (5.3%)

Source: Each state's 2016 Data Summary/Report

2016 MAID Demographics

Oregon: N=133 Washington: N=239 California: N=111 (In 6 months)

Education

	OR	WA
Less Than High School	3.8%	4%
High School Graduate	17.4%	27%
Some College	28.8%	35%
Baccalaureate or Higher	50.0%	32%

	CA
No High School Diploma	5.4%
High School Diploma or GED	22.5%
Some College, No Degree	14.4%
Associate, Bachelor or Master Degree	45.9%
Doctorate or Professional Degree	11.7%

Marital Status

	OR	WA
Married	47.0%	43%
Widowed	19.7%	20%
Divorced	27.3%	27%
Domestic Partner	.	1%
Never Married/Single	6.1%	7%

Source: Each state's 2016 Data Summary/Report

2016 MAID Demographics

Insurance

Oregon: N=133 Washington: N=239 California: N=111 (In 6 months)

Oregon

Private	26.3%
Medicare, Medicaid or Other Gov't	61.7%
None	0.01%
Unknown	11.3%

Washington

Private Only	18%
Medicare, Medicaid Only	46%
Combo of Private & Medicare/Medicaid	17%
None	<1%
Unknown	6%
Other (Including VA)	11%

California

Private	18.9%
Medicare	44.2%
Medicaid	3.6%
Medicare/Medicaid (Dual Eligible)	9.0%
Medicare/Medicaid & Private Supplemental Insurance	11.7%
Has Insurance, but Type Unknown	9.0%
None	3.6%

Most private insurance pays for MAID medication and the physician visit

By law, federal funds cannot be used for MAID medication; therefore,

- Medicare and the VA cannot pay for MAID medication
  - Medicare enrollees may use their private supplemental insurance
- Medicaid can pay for MAID medication out of a pot of state-only funds

Source: Each state's 2016 Data Summary/Report

Underlying Illness, 2016

Oregon: N=133 Washington: N=239 California: N=111 (In 6 months)

Oregon

Cancer	78.9%
ALS	6.8%
Chronic Lower Respiratory Disease	1.5%
Heart Disease	6.8%
Other	6.0%

Washington

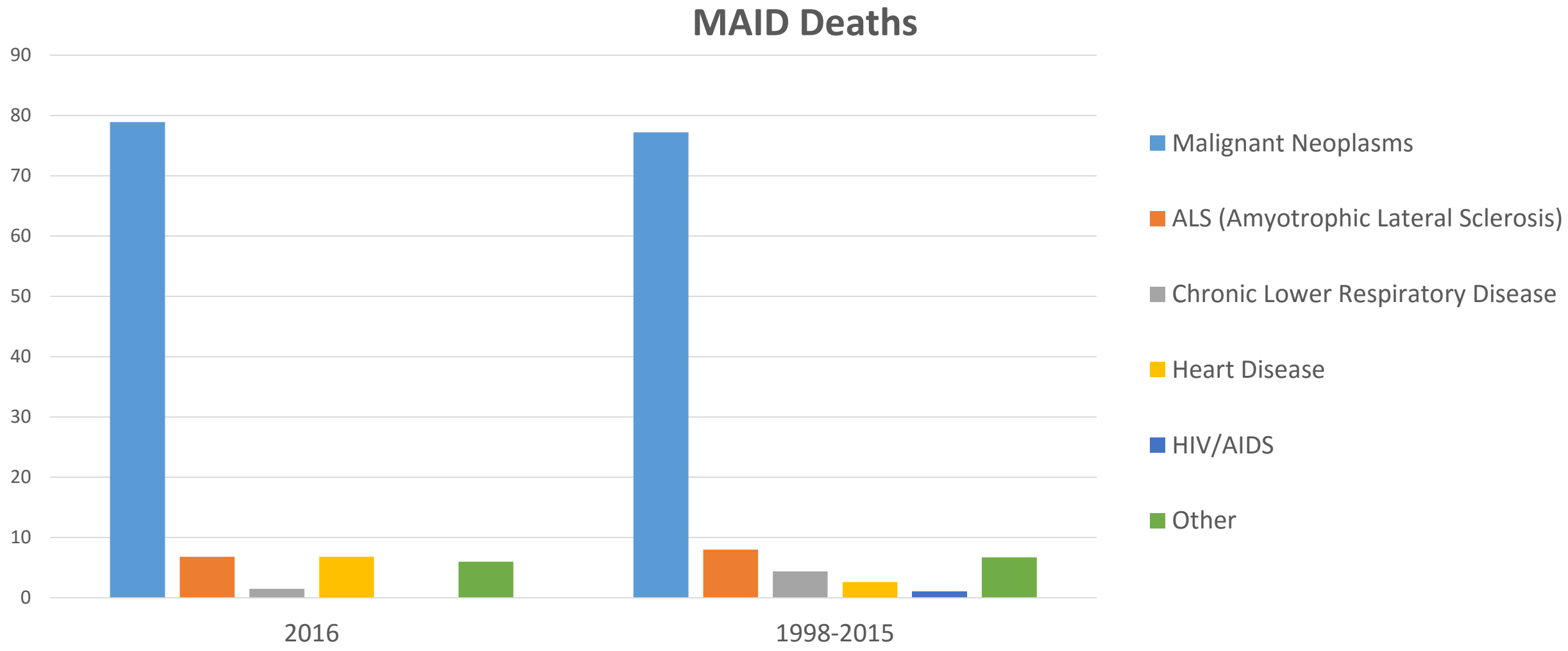
Cancer	77%
Neuro-degenerative Disease (including ALS)	8%
Respiratory Disease (including COPD)	8%
Heart Disease	6%
Other	2%

California

Cancer	58.6%
Neuromuscular	18%
Lung Respiratory Disease (non-cancer)	6.3%
Heart Disease	8.1%
Other	9%

Source: Each state's 2016 Data Summary/Report

Oregon: Underlying Illnesses (1998-2016)



Source: Oregon DWDA 2016 Data Summary

Circumstances When Medication Ingested or at Death, 2016

		OR	WA	CA
Location	Home	88.6%	88%	.
	LTC/ALF/ Adult Foster Care	6.8%	7%	.
	Hospital	2.3%	0	.
	Other	2.3%	2%	.
Hospice	Enrolled	88.7%	77%	83.8%
	Unknown	0	9%	4.5%

Oregon: N=133
Washington: N=239
California: N=111 (In 6 months)

Health Care Provider Present at Death (Oregon)

Prescribing physician	13 (9.8%)
Other provider	14 (10.5%)
No provider	102 (76.7%)
Unknown	4 (3.0%)

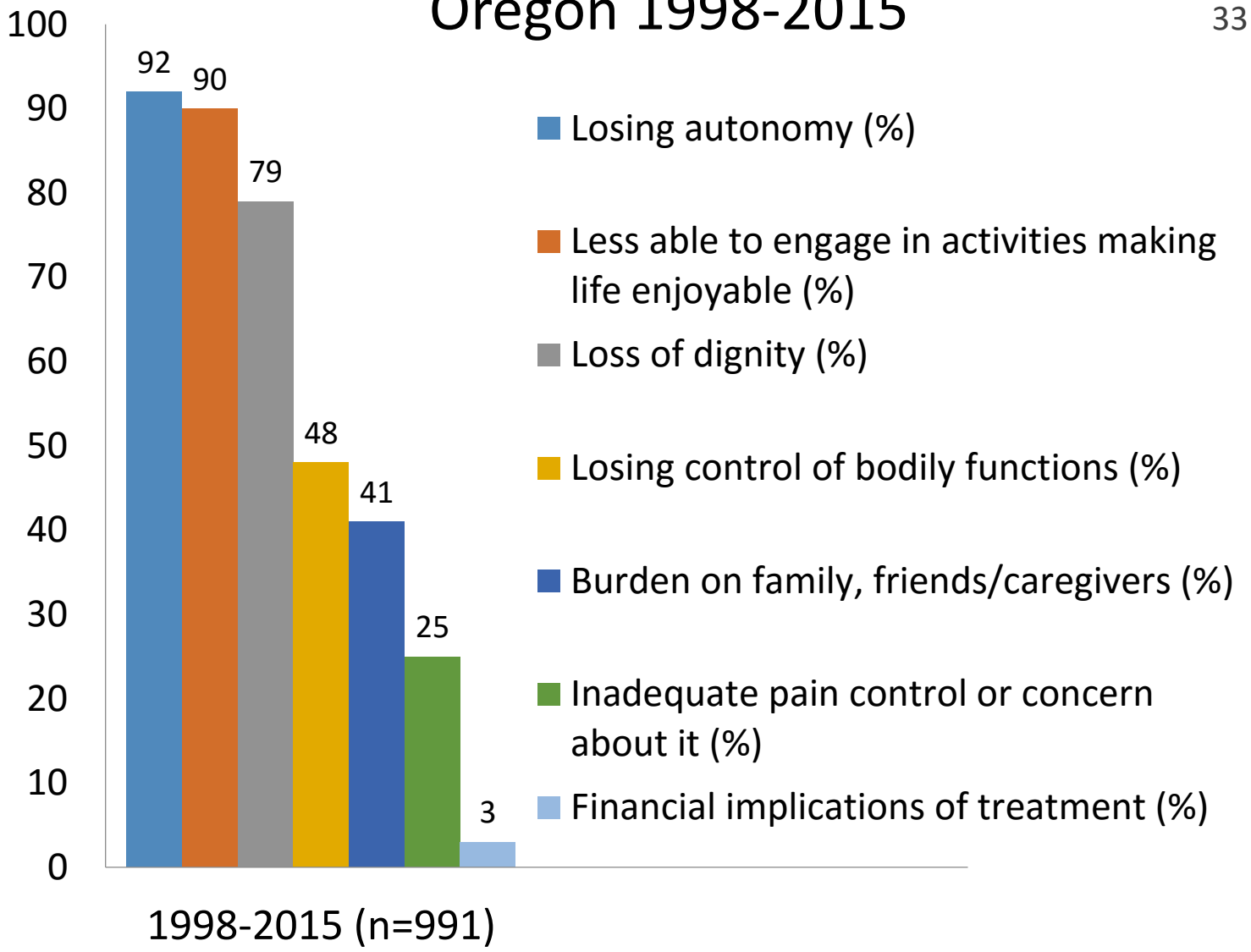
Source: Each state's 2016 Data Summary Report

MAID Patient Concerns

Oregon & Washington 2016

Reason Provided	OR %	WA %
Losing Autonomy	89.5	87
Unable to engage in enjoyable activities	89.5	84
Loss of dignity	65.4	66
Loss of bodily control	36.8	43
Burden on family	48.9	51
Concern about pain control	35.3	41
Financial implications of treatment	5.3	8

Oregon 1998-2015



Source: Oregon's and Washington's 2016 Data Summary/Report

What has been the impact of informing patients about end-of-life options such as hospice care and palliative care?

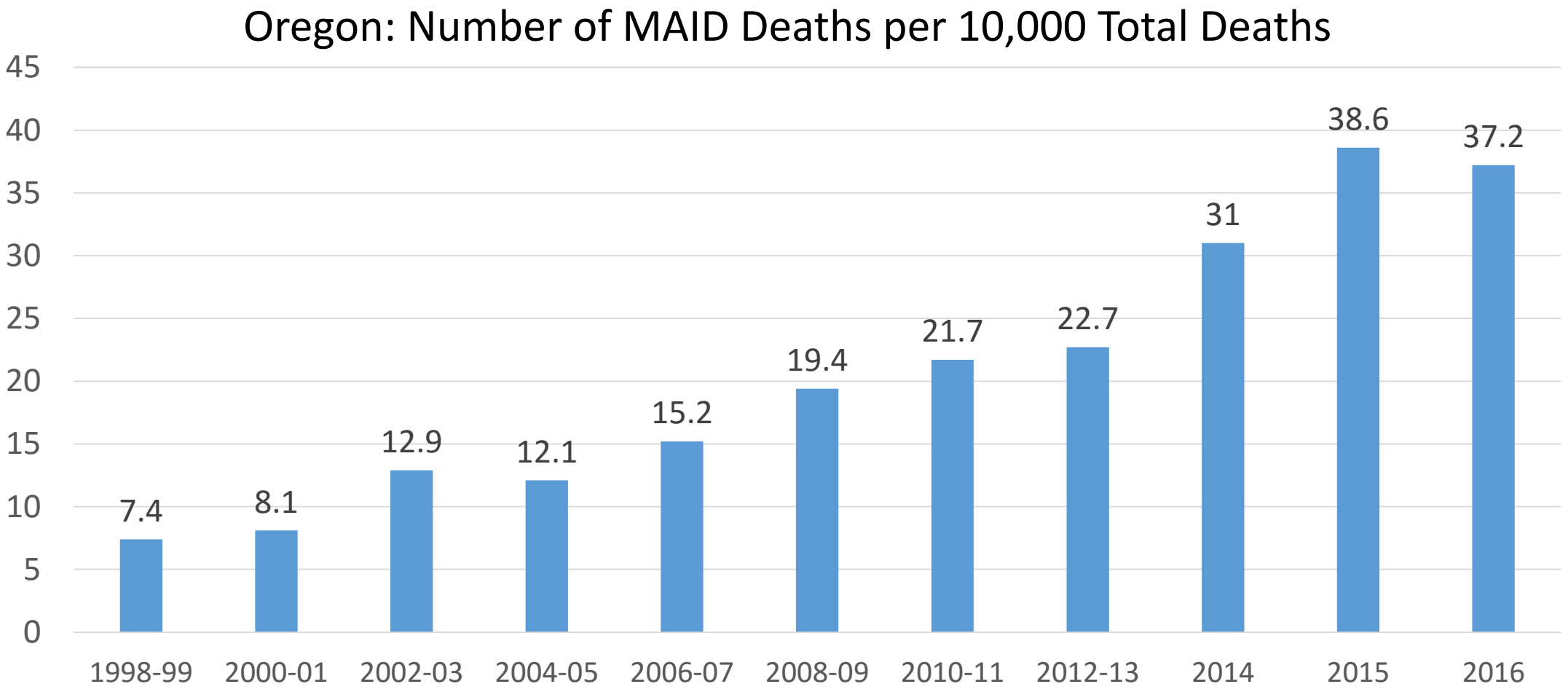
- In the states with available data (OR, WA, CA), the great majority of MAID users already were enrolled in hospice and had access to palliative care
  - Oregon: 88.7% (2016); 90.4% (1998-2015)
  - Washington: 77% (2016); 81% (2015); 69% (2014)
  - California: 83.8% (2016)
- All MAID statutes require that both the attending and consulting physician inform the patient about end-of-life options, including hospice and palliative care
- Hospice utilization has increased in Oregon since MAID was passed, but hospice utilization in Oregon has been among the highest in the nation since at least 1992[1]
- In Oregon, palliative care services spending and patient satisfaction have risen since 1998, when MAID became legal[2]
  - The request for information on MAID can lead to conversations between patients and their physicians about a range of end-of-life options[2]

1: Jackson A. The Inevitable—Death: Oregon's End-of-Life Choices. *Willamette Law Review*, Willamette University College of Law. Salem, Oregon, 45:1(137-160) Fall 2008; 2: Cain, Cindy L. Implementing Aid in Dying in California: Experiences from Other States Indicates Need for Strong Implementation Guidance. Los Angeles, CA: UCLA Center for Health Policy Research, 2016

Coercion and Fraud

- Penalties for coercion and fraud included in statute:
  - Oregon: Class A felony
  - Washington: Class A felony
  - Vermont: Unable to find section on coercion/fraud
  - California: A felony
  - Colorado: Class 2 felony
  - D.C.: Class A felony
- Research on instances of coercion and/or fraud is ongoing and will be presented during the final presentation

Estimating MAID Utilization in Virginia



Data compiled from Oregon's annual DWDA data summaries, 1998-2016

Estimating MAID Utilization in Virginia

- In Oregon, there were 37.2 MAID deaths per 10,000 total deaths in 2016
  - Less than 1 percent of all deaths
- In California the death rate was 6.06 per 10,000 total deaths for the first six months after enactment (June-December, 2016)
  - Out of 191 prescriptions written, the outcome for 59 patients is still unknown
- For Oregon and Washington (states for which there is trend data), the number of people who died due to MAID medication has remained below 200 individuals
- Estimate for Virginia: Like Oregon and Washington, it is likely that the number of people requesting MAID would be quite small for the first few years, gradually increasing to approximately 242 individuals dying from MAID medications
  - Oregon: 37.2 / 10,000 = .00372 percent of all deaths
  - Virginia: .00372 x 65,000 (total deaths in 2015*) = 241.8

*Most recent data. Sources: Oregon, Washington and California data summaries/reports; and for Virginia death data: http://vaperforms.virginia.gov/indicators/healthfamily/mortalityLongevity.php

Joint Commission on Health Care

Street Address
600 E. Main Street
Suite 301
Richmond, VA 23219

Mailing Address
PO Box 1322
Richmond, VA
23218

Telephone
804.786.5445
Fax
804.786.5538
http://jchc.virginia.gov