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 Testimony of

**Fritz Mulhauser**

Before the Committee on Health

Council of the District of Columbia

FY23 Performance Oversight Hearing – D.C. Department of Health

January 18, 2024

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Thank you for allowing us to testify regarding the performance of the Department of Health. I am an Open Government Coalition board member and a Ward 6 resident.

While most witnesses today will talk about ways the agency can help District residents to get healthy and stay healthy, we want to update you on how the agency helps the public **know** about health topics – specifically, providing public data on the D.C. Death With Dignity Act (DWDA).[[1]](#footnote-1)

**Despite committee action, mandated reports are still delayed.**

At FY22 oversight last year, we recounted overdue DWDA reports and asked the committee to encourage the agency to issue reports mandated in law more promptly. The committee’s FY24 budget report addressed the problem:[[2]](#footnote-2)

* You noted “Death with Dignity advocates struggling to understand the impact of this important law.”
* You agreed that “a core component of a public health agency is research, data analysis, and reporting on key indicators of public health…” since “reports are crucial for the Council, research and advocacy organizations, and healthcare industries to make informed decisions.”
* You reported from multiple experiences that “many DC Health reports are significantly delayed or lost in the internal review process.”
* And this committee gave clear direction that DOH “streamline the processes within its control and publish reports **in a timelier manner**.”

Our news today, regretfully, is that DWDA reports are still overdue. The Department's web page for the program shows no reports since one covering February 2020 to February 2021 issued long ago. Data should have been collected and published for 2021-22 and 2022-23 by now on any reasonable interpretation of the law.

**There is no strong justification why this set of reports is delayed,**

The agency offers no reason, finding nothing when we ask under FOIA for any records about what prevents completing this work. No unusual data-collection or analysis burden is involved; few doctors and pharmacists have registered to take part; never more than seven people a year have sought prescriptions and fewer still have used them. Past reports (withdrawn and reissued after a long delay) are very short -- comprising a page of text, a chart, and a table.[[3]](#footnote-3)

The answer may be simply a question of priorities. In an April 12 email last year, DOH attorney Edward Rich wrote, “The statute does not provide a date by which the report is to be released. Thus, there is no statutory due date…” That is, Council report language offers no reason to change the executive’s current low priority for this reporting.[[4]](#footnote-4)

Even though the agency believes it can issue the reports at its convenience, the public reasonably expects a more rapid and routine effort to compile data and issue mandated reports post-COVID.

Your committee has said the same—with no result.

Statutory direction changes everything.

We repeat our request today for renewed direction to the agency in the form of a Budget Support Act text amending D.C. Code § 7-661.07(b) to add a reasonable date for publication each year of future DWDA reports.

We are happy to answer any questions. And for later inquiries, contact me at 202-544-4131.

1. The DWDA establishes a process by which competent terminally ill D.C. residents can legally obtain a physician’s prescription for drugs to end their life humanely and peacefully. Controversy over the legislation included conflicting predictions of its effects. To assure data on implementation, Section 8 of the act (D.C. Code § 7-661.07(b)) called for annual reports to the Council and the public beginning in February 2018; no patient participated in 2017-18. [↑](#footnote-ref-1)
2. Emphasis added. See pp. 44-45 in <https://dccouncil.gov/budget-oversight-2024/20230426-committee-on-health-fy24-budget-report-complete/>. [↑](#footnote-ref-2)
3. Early years’ reports were withdrawn, according to a DOH attorney, because of concerns for possible privacy invasion if individuals might be identifiable from the reported data (which the Council directed include six demographic descriptors presumably to allow inferences of bias). We learned no reason why remedial action and republication took years. We consulted health statistics experts elsewhere facing threats of identifying individuals in small-cell data tables. They reported the problem is familiar and has ready solutions; we saw sample reports demonstrating their point. [↑](#footnote-ref-3)
4. When the Coalition asked one D.C. agency for a data report requested in another committee budget report, an agency staff member responded, “we have done no such report; Council recommendations are not requirements.” On Capitol Hill the Congressional Research Service (CRS) reports federal agencies respond very differently. Reports “include detailed spending instructions, directives, expectations, and spending restrictions…[and] may require or encourage departments or agencies to take specified action or refrain from taking a certain action…” CRS continued, [though] “report language does not have statutory force and departments and agencies are not legally bound by their declarations,” even so they “do, however, explain congressional intent, and executive branch agencies take them seriously because they must justify their budget requests annually” to the committees that wrote the reports. See *Appropriations Bills: What Is Report Language?* CRS Report 98-558 (March 23, 2010), at p.2. Available at: <https://www.everycrsreport.com/files/20100323_98-558_cba7e28584033a268db936509835e7948a369635.pdf>. [↑](#footnote-ref-4)