



MEMORANDUM IN SUPPORT

A.1238-A (Dinowitz)/S.1924-A (Balboni)

June 20, 2005

Gay Men's Health Crisis (GMHC), the nation's oldest provider of services for people with HIV and AIDS submits this memorandum in **strong support of this legislation**. The bill would amend the public health law, relating to the rights of domestic partners, spouses, parents, siblings and others to control the disposition of a decedent's remains.

Unlike citizens in many other states, New Yorkers are severely limited in their ability to control the disposition of their remains, and are not able to designate a proxy to carry out their wishes. This causes conflict among families and confusion for funeral homes, crematories and cemeteries. This bill addresses the ambiguity in New York's current law by establishing a simple proxy form authorizing the appointment of an agent, who can carry out special directions, and by creating a definitive priority list for individuals who have not designated a proxy agent. This priority list clearly establishes who has the legal right and responsibility to control an individual's remains. Within this priority list, the bill would extend domestic partners rights comparable to those of surviving spouses. The priority list is in line with disposition law in other states and represents a common sense solution to a devastating and frequent problem.

GMHC has diligently worked with lawmakers and the community to address many of the concerns brought up by parties impacted by this legislation. The proxy form has been updated to include pre-need agreements, the definition of domestic partner has been amended and is now based on the definition currently used by the NYS Department of Civil Service, and various other sections of the bill have been poured over by legislators, industry, community and other experts. We believe this bill as amended is a strong piece of legislation that will fill a critical gap in the current law, allowing terminally ill persons to plan ahead with their loved ones. It is supported by various other groups in NY including HIV/AIDS service providers, seniors, LGBT organizations, cemetery representatives, a chain of funeral directors and scores of individuals who can personally attest to the need for this bill.

Current law permits adults to execute a will establishing their binding intentions for disposition of property after death and to execute health care proxies stating who they want to make medical decisions for them in the event they become incapacitated. Current law even allows one to designate a proxy to donate a body to science. However, current law does not allow planning for the disposition of one's remains. Although an individual can specify his/her wishes in a will, this has no practical effect since wills are generally not probated until long after the individual has died. In addition, wills must be formally executed to be valid and many individuals without property do not execute wills.

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Additionally, current law does not contain a specific priority list of those individuals which may have the right to control the disposition of a decedent's remains. This is often problematic for domestic partners and/or same-sex committed partners. Frequently, partners will not get the same recognition as a spouse, and long time partners must try to take special legal precautions to prove their relations. Often these legal precautions are thrown out by courts or even challenged by a family member. As a result the decedent's remains go to the next of kin, instead of the surviving partner. As the situation stands, many people die without having expressed who they want to be responsible for their remains causing conflict among families and confusion for funeral homes, crematories and cemeteries.

GMHC strongly supports the proposed legislation authorizing the appointment of an agent to control the disposition of remains. The bill provides for a simple designation signed by the person in front of two witnesses. For those who have made designations in a will, it also makes clear that the designation should be respected before it has been probated. This legislation would allow terminally ill individuals to ensure that their wishes about this intensely personal matter will be carried out.

**GMHC has advocated for this legislation for over 10 years--now is the time to act!
GMHC strongly urges passage of this bill this session.**