
A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that at least thirty
2 states have either enacted or considered enacting laws to allow
3 mentally competent adult residents who have a terminal illness
4 to voluntarily request and receive a prescription medication
5 that would allow the person to die in a peaceful, humane, and
6 dignified manner. Each of the states that have grappled with
7 this issue has done their best to address the concerns of the
8 impassioned voices on each side of the debate.

9 The legislature further finds that Hawaii patients who are
10 terminally ill and mentally capable currently have limited
11 options to end their suffering if the dying process becomes
12 unbearable. Palliative care, VSED (voluntarily stopping eating
13 and drinking), or stopping artificial ventilation or other life-
14 sustaining therapy to advance the dying process are all options
15 a dying individual can choose. However, physicians do not
16 always offer these options to their patients, and more
17 importantly, these options do not always result in a quick or



1 peaceful death. Advances in technology mean that the process of
2 dying can be extended even when no cure or likelihood of
3 successful medical intervention exists. This can often result
4 in terminally ill patients undergoing unremitting pain,
5 discomfort, and an irreversible reduction in their quality of
6 life in their final days.

7 The legislature has closely examined this issue a number of
8 times over the past two decades. Following this long period of
9 evaluation and debate, the legislature believes that it is
10 necessary and appropriate to give patients the ability to choose
11 their own medical care while also ensuring there are robust
12 safeguards in place to prevent any possible abuse. Therefore,
13 the legislature believes that any legislation for patient choice
14 must include all of the following protections for patients:

15 (1) Confirmation by two health care providers of the
16 patient's diagnoses, prognosis, and medical
17 competence, and the voluntariness of the patient's
18 request;

19 (2) Two oral requests from the patient, separated by not
20 less than fifteen days, and one signed written request



1 that is witnessed by two people, one of whom must be
2 unrelated to the patient;

3 (3) An additional waiting period between the written
4 request and the writing of the prescription; and

5 (4) The creation of strict criminal penalties for any
6 person who:

7 (A) Tamper with a person's request for a
8 prescription pursuant to this Act; or

9 (B) Coerces a person with a terminal illness to
10 request a prescription.

11 In addition, the patient at all times should retain the right to
12 rescind the request for medication and be under no obligation to
13 fill the prescription or ingest the medication.

14 These rigorous safeguards would be the strongest of any
15 state in the nation and will thoroughly protect patients and
16 their loved ones from any potential abuse.

17 The legislature concludes that adult, terminally ill
18 residents of the State should have the fundamental right to
19 determine their own medical treatment as they near the end of
20 life, including the right to choose to avoid an unnecessarily
21 prolonged life of pain and suffering.



1 The purpose of this Act is to allow qualified patients in
2 this State with a medically confirmed terminal illness with less
3 than six months to live and complete mental capacity to
4 determine their own medical care at the end of their lives.

5 SECTION 2. This Act shall be known and may be cited as the
6 "Our Care, Our Choice Act".

7 SECTION 3. The Hawaii Revised Statutes is amended by
8 adding a new chapter to be appropriately designated and to read
9 as follows:

10 "CHAPTER

11 OUR CARE, OUR CHOICE ACT

12 § -1 Definitions. As used in this chapter:

13 "Adult" means an individual who is eighteen years of age or
14 older.

15 "Attending provider" means a physician licensed pursuant to
16 chapter 453 or an advanced practice registered nurse licensed
17 pursuant to chapter 457 who has responsibility for the care of
18 the patient and treatment of the patient's terminal disease.

19 "Capable" means that in the opinion of a court or in the
20 opinion of the patient's attending provider or consulting
21 provider, psychiatrist, or psychologist, a patient has the



1 ability to make and communicate health care decisions to health
2 care providers.

3 "Consulting provider" means a physician licensed pursuant
4 to chapter 453 who is qualified by specialty or experience to
5 make a professional diagnosis and prognosis regarding the
6 patient's disease, but who has not previously assumed
7 responsibility for the care of the patient with the attending
8 provider.

9 "Counseling" means one or more consultations as necessary
10 between a state-licensed psychiatrist or psychologist and a
11 patient for the purpose of determining that the patient is
12 capable of making medical decisions and not suffering from a
13 psychiatric or psychological disorder or depression causing
14 impaired judgment.

15 "Department" means the department of health.

16 "Health care facility" shall have the same meaning as in
17 section 323D-2.

18 "Health care provider" means a person licensed, certified,
19 or otherwise authorized or permitted by the law of this State to
20 administer health care or dispense medication in the ordinary



1 course of business or practice of a profession, and includes a
2 health care facility.

3 "Informed decision" means a decision by a qualified patient
4 to request and obtain a prescription to end the qualified
5 patient's life pursuant to this chapter. The informed decision
6 shall be based on an appreciation of the relevant facts and made
7 after being fully informed by the attending provider of:

- 8 (1) The medical diagnosis;
- 9 (2) The prognosis;
- 10 (3) The potential risks associated with taking the
11 medication to be prescribed;
- 12 (4) The probable result of taking the medication to be
13 prescribed;
- 14 (5) The possibility that the individual may choose not to
15 obtain the medication or may obtain the medication and
16 may decide not to ingest it; and
- 17 (6) The feasible alternatives or additional treatment
18 opportunities, including but not limited to comfort
19 care, hospice care, and pain control.

20 "Medically confirmed" means the medical opinion of the
21 attending provider has been confirmed by a consulting provider



1 who has examined the patient and the patient's relevant medical
2 records.

3 "Patient" means a person who is under the care of a
4 attending provider.

5 "Physician" means a doctor of medicine or osteopathy
6 licensed to practice medicine pursuant to chapter 453 by the
7 Hawaii medical board.

8 "Prescription" means prescription medication that the
9 qualified patient may self-administer to end the qualified
10 patient's life pursuant to this chapter.

11 "Qualified patient" means a capable adult who is a resident
12 of the State and has satisfied the requirements of this chapter
13 in order to obtain a prescription for medication to end the
14 qualified patient's life pursuant to this chapter.

15 "Terminal disease" means an incurable and irreversible
16 disease that has been medically confirmed and will, within
17 reasonable medical judgment, produce death within six months.

18 "Terminal disease" does not include age or any physical
19 disability or condition that is not likely to, by itself, cause
20 death within six months.



1 § -2 Written request for medication; initiated. An
2 adult who is capable, is a resident of the State, and has been
3 determined by an attending provider and consulting provider to
4 be suffering from a terminal disease, and who has voluntarily
5 expressed the adult's wish to die, may, pursuant to section -
6 9, submit:

7 (1) Two oral requests, a minimum of fifteen days apart;
8 and

9 (2) One written request,
10 for a prescription that may be administered for the purpose of
11 ending the adult's life in accordance with this chapter. The
12 attending provider shall directly, and not through a designee,
13 receive all three requests required pursuant to this section.

14 § -3 Form of the written request. (a) A valid written
15 request for a prescription under this chapter shall be
16 substantially in the form described in section -23, and shall
17 be signed and dated by the qualified patient and witnessed by at
18 least two individuals who, in the presence of the qualified
19 patient, attest that to the best of their knowledge and belief
20 the qualified patient is of sound mind, acting voluntarily, and
21 is not being coerced to sign the request.



(b) One of the witnesses shall be a person who is not:

(1) A relative of the qualified patient by blood,
marriage, or adoption;

(2) 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, trust, or
other legal instrument, or by operation of law; or

(3) An owner, operator or employee of a health care
facility where the qualified patient is receiving
medical treatment or is a resident.

(c) The qualified patient's attending provider at the time
the request is signed shall not be a witness.

§ -4 Attending provider; duties. (a) The attending
provider shall:

(1) Make the initial determination of whether a patient
has a terminal disease, is capable, and has made the
request voluntarily;

(2) Require that the patient demonstrate residency
pursuant to section -13;

(3) To ensure that the patient is making an informed
decision, inform the patient of:



- 1 (A) The medical diagnosis;
- 2 (B) The prognosis;
- 3 (C) The potential risks associated with taking the
- 4 medication to be prescribed;
- 5 (D) The probable result of taking the medication to
- 6 be prescribed;
- 7 (E) The possibility that the individual may choose
- 8 not to obtain the medication or may obtain the
- 9 medication but may decide not to ingest it; and
- 10 (F) The feasible alternatives or additional treatment
- 11 opportunities, including but not limited to
- 12 comfort care, hospice care, and pain control;
- 13 (4) Refer the patient to a consulting provider for medical
- 14 confirmation of the diagnosis, and for a determination
- 15 that the patient is capable and acting voluntarily;
- 16 (5) Refer the patient for counseling if appropriate;
- 17 (6) Recommend that the patient notify next of kin;
- 18 (7) Counsel the patient about the importance of having
- 19 another person present when the qualified patient
- 20 self-administers the prescription prescribed pursuant



1 to this chapter and of not self-administering the
2 prescription in a public place;

3 (8) Inform the patient that a qualified patient may
4 rescind the request at any time and in any manner, and
5 offer the qualified patient an opportunity to rescind
6 at the time of the qualified patient's second oral
7 request made pursuant to section -9;

8 (9) Verify, immediately prior to writing the prescription
9 for medication under this chapter, that the qualified
10 patient is making an informed decision;

11 (10) Fulfill the medical record documentation requirements
12 of section -12;

13 (11) Ensure that all appropriate steps are carried out in
14 accordance with this chapter prior to writing a
15 prescription for medication to enable a qualified
16 patient to end the qualified patient's life pursuant
17 to this chapter; and

18 (12) Either:

19 (A) Dispense medications directly, including
20 ancillary medications intended to facilitate the
21 desired effect to minimize the patient's



1 discomfort; provided that the attending provider
2 is authorized to dispense controlled substances
3 pursuant to chapter 329, has a current Drug
4 Enforcement Administration certificate, and
5 complies with any applicable administrative
6 rules; or

7 (B) With the qualified patient's written consent:

8 (i) Contact a pharmacist of the qualified
9 patient's choice and inform the pharmacist
10 of the prescription; and

11 (ii) Transmit the written prescription
12 personally, by mail, or electronically to
13 the pharmacist, who shall dispense the
14 medication to either the qualified patient,
15 the attending provider, or an expressly
16 identified agent of the qualified patient.

17 (b) Notwithstanding any other provision of law, an
18 attending provider may sign the qualified patient's death
19 certificate. The death certificate shall list the terminal
20 disease and self-administration of the medication prescribed
21 pursuant to this chapter as the immediate cause of death.



1 § -5 **Consulting provider; confirmation.** Before a
2 patient is qualified under this chapter, a consulting provider
3 shall examine the patient and the patient's relevant medical
4 records and confirm, in writing, the attending provider's
5 diagnosis that the patient is suffering from a terminal disease,
6 and verify that the patient is capable, is acting voluntarily,
7 and has made an informed decision.

8 § -6 **Counseling referral.** If, in the opinion of either
9 the attending provider or the consulting provider, there are
10 indications of a psychiatric or psychological disorder, the
11 attending provider or the consulting provider shall refer the
12 patient for counseling. No medication to end a patient's life
13 pursuant to this chapter shall be prescribed until the person
14 performing the counseling determines that the patient is not
15 suffering from a psychiatric or psychological disorder or
16 depression causing impaired judgment.

17 § -7 **Informed decision.** No qualified patient shall
18 receive a prescription for medication to end the qualified
19 patient's life pursuant to this chapter unless the qualified
20 patient has made an informed decision. Immediately prior to
21 writing a prescription under this chapter, the attending



1 provider shall verify that the qualified patient is making an
2 informed decision.

3 **§ -8 Family notification.** The attending provider shall
4 recommend that the qualified patient notify the next of kin of
5 the qualified patient's request for a prescription pursuant to
6 this chapter. A qualified patient who declines or is unable to
7 notify next of kin shall not have the qualified patient's
8 request denied solely for that reason.

9 **§ -9 Written and oral requests.** To receive a
10 prescription for medication that a qualified patient may self-
11 administer to end the qualified patient's life pursuant to this
12 chapter, a qualified patient shall have made an oral request and
13 a written request, and reiterate the oral request to the
14 qualified patient's attending provider not less than fifteen
15 days after making the initial oral request. At the time the
16 qualified patient makes the second oral request, the attending
17 provider shall offer the qualified patient an opportunity to
18 rescind the request.

19 **§ -10 Right to rescind request.** A qualified patient may
20 rescind the request at any time and in any manner without regard
21 to the qualified patient's mental state. No prescription under



1 this chapter shall be made available pursuant to section -
2 4(a)(12) if the attending provider has not offered the qualified
3 patient an opportunity to rescind the request made pursuant to
4 section -9.

5 § -11 **Waiting periods.** Not less than fifteen days shall
6 elapse between the qualified patient's initial oral request and
7 the taking of steps to make available a prescription pursuant to
8 section -4(a)(12). Not less than forty-eight hours shall
9 elapse between the qualified patient's written request and the
10 taking of steps to make available a prescription pursuant to
11 section -4(a)(12).

12 § -12 **Medical record; documentation requirements.** The
13 following shall be documented or filed in a qualified patient's
14 medical record:

- 15 (1) All oral requests by the qualified patient for a
16 prescription to end the qualified patient's life
17 pursuant to this chapter;
- 18 (2) All written requests by the qualified patient for a
19 prescription to end the qualified patient's life
20 pursuant to this chapter;



- 1 (3) The attending provider's diagnosis and prognosis and
2 determination that the qualified patient is capable,
3 acting voluntarily, and has made an informed decision;
- 4 (4) The consulting provider's diagnosis and prognosis and
5 verification that the qualified patient is capable,
6 acting voluntarily, and has made an informed decision;
- 7 (5) A report of the outcome and determinations made during
8 counseling, if performed;
- 9 (6) The attending provider's offer to the qualified
10 patient to rescind the patient's request at the time
11 of the qualified patient's second oral request made
12 pursuant to section -9; and
- 13 (7) A note by the attending provider indicating that all
14 requirements under this chapter have been met and
15 indicating the steps taken to carry out the request,
16 including a notation of the medication prescribed.

17 § -13 **Residency requirement.** Only requests made by
18 residents of this State shall be granted under this chapter.
19 Factors demonstrating state residency include but are not
20 limited to:



- (1) Possession of a Hawaii driver's license or civil identification card;
- (2) Registration to vote in Hawaii;
- (3) Evidence that the patient owns or leases property in Hawaii; or
- (4) Filing of a Hawaii tax return for the most recent tax year.

§ -14 Reporting requirements. (a) Within thirty calendar days of writing a prescription, the attending provider shall submit a copy of the qualifying patient's written request, as well as copy of all the documentation required pursuant to section -12 to the department.

(b) Within thirty calendar days following the qualifying patient's death from ingestion of a prescribed medication pursuant to this chapter, or any other cause, the attending provider shall submit any follow-up information to the documentation required pursuant to section -12 to the department.

(c) The department shall annually collect and review all information submitted pursuant to this chapter. The information collected shall be confidential and shall be collected in such a



1 manner that protects the privacy of all qualifying patients, the
2 qualifying patients' family, and any attending provider or
3 consulting provider involved with a qualifying patient pursuant
4 to this chapter. Information collected shall not be disclosed,
5 discoverable, or compelled to be produced in any civil,
6 criminal, administrative, or other proceeding.

7 (d) On or before July 1, 2019, and each year thereafter,
8 the department shall create a report of information collected
9 under subsection (c) and vital statistics records maintained by
10 the department and shall post the report on the department's
11 website. Information contained in the report shall only
12 include:

- 13 (1) The number of qualifying patients for whom a
14 prescription was written pursuant to this chapter;
15 (2) The number of known qualifying patients who died each
16 year for whom a prescription was written pursuant to
17 this chapter and the cause of death of those
18 qualifying patients;
19 (3) The total number of prescriptions written pursuant to
20 this chapter for the year in which the report was



1 created as well as cumulatively for all years

2 beginning with 2019;

3 (4) The total number of qualifying patients who died while
4 enrolled in hospice or other similar palliative care
5 program at the time of death;

6 (5) The number of known deaths in Hawaii from a
7 prescription written pursuant to this chapter per
8 five-thousand deaths in Hawaii;

9 (6) The number of attending providers who wrote
10 prescriptions pursuant to this chapter;

11 (7) Of the people who died as a result of self-
12 administering a prescription pursuant to this chapter:

13 (A) Age at death;

14 (B) Education level;

15 (C) Race;

16 (D) Sex;

17 (E) Type of insurance, if any; and

18 (F) Underlying illness.

19 § -15 Disposal of unused medication. A person who has
20 custody or control of any unused medication dispensed under this
21 chapter after the death of a qualified patient shall personally



1 deliver the unused medication for disposal to the nearest
2 qualified facility that properly disposes of controlled
3 substances, or if none is available, shall dispose of it by
4 lawful means.

5 **§ -16 Effect on construction of wills or contracts. (a)**

6 No provision in any will or contract, or other agreement,
7 whether written or oral, to the extent the provision would
8 affect whether a person may make or rescind a request for a
9 prescription to end the person's life pursuant to this chapter,
10 shall be valid.

11 (b) No obligation owing under any currently existing
12 contract shall be conditioned or affected by the making or
13 rescinding of a request, by a person, for a prescription to end
14 the person's life pursuant to this chapter.

15 **§ -17 Insurance or annuity policies.** The sale,
16 procurement, or issuance of any life, health, or accident
17 insurance or annuity policy or the rate charged for any such
18 policy shall not be conditioned upon or affected by the making
19 or rescinding of a request, by a person, for a prescription to
20 end the person's life pursuant to this chapter. A qualified
21 patient's act of ingesting medication to end the qualified



1 patient's life pursuant to this chapter shall have no effect
2 upon a life, health, or accident insurance or annuity policy.

3 § -18 **Construction of chapter.** (a) Nothing in this
4 chapter shall be construed to authorize a health care provider
5 or any other person to end a patient's life by lethal injection,
6 mercy killing, or active euthanasia. Actions taken in
7 accordance with this chapter shall not, for any purpose,
8 constitute suicide, assisted suicide, mercy killing, murder,
9 manslaughter, negligent homicide, or any other criminal conduct
10 under the law.

11 (b) Nothing in this chapter shall be construed to allow a
12 lower standard of care for qualified patients in the community
13 where the qualified patient is treated or in a similar
14 community.

15 § -19 **Immunities; basis for prohibiting health care**
16 **provider from participation; notification; permissible**
17 **sanctions.** (a) Except as provided in section -20 and
18 subsection (c):

19 (1) No person shall be subject to civil or criminal
20 liability or professional disciplinary action for
21 participating or acting in good faith compliance with



1 this chapter, including being present when a qualified
2 patient takes the prescribed medication to end the
3 qualified patient's life pursuant to this chapter;

4 (2) No professional organization or association or health
5 care provider shall subject any person to censure,
6 discipline, suspension, loss of license, loss of
7 privileges, loss of membership, or other penalty for
8 participating or refusing to participate in good faith
9 compliance with this chapter;

10 (3) No request by a qualified patient for a prescription
11 or provision by an attending provider of medication in
12 good faith compliance with this chapter shall
13 constitute neglect, harm, self-neglect, or abuse for
14 any purpose of law or provide the sole basis for the
15 appointment of a guardian or conservator;

16 (4) No health care provider shall be under any duty,
17 whether by contract, statute, or any other legal
18 requirement, to participate in the provision to a
19 qualified patient of a prescription or of medication
20 to end the qualified patient's life pursuant to this
21 chapter. If a health care provider is unable or



1 unwilling to carry out a patient's request under this
2 chapter and the patient transfers the patient's care
3 to a new health care provider, the prior health care
4 provider shall transfer, upon request, a copy of the
5 patient's relevant medical records to the new health
6 care provider; and

7 (5) No health care facility shall be subject to civil or
8 criminal liability for acting in good faith compliance
9 with this chapter.

10 (b) Notwithstanding any other provision of law, a health
11 care provider may prohibit another health care provider from
12 participating in actions covered by this chapter on the premises
13 of the prohibiting provider if the prohibiting provider has
14 notified the health care provider of the prohibiting provider's
15 policy regarding participation in actions covered by this
16 chapter. Nothing in this subsection shall prevent a health care
17 provider from providing health care services to a patient that
18 do not constitute participation in actions covered by this
19 chapter.

20 (c) Subsection (a) notwithstanding, a health care provider
21 may subject another health care provider to the following



1 sanctions, if the sanctioning health care provider has notified
2 the sanctioned health care provider prior to participation in
3 actions covered by this chapter that it prohibits participation
4 in actions covered by this chapter:

5 (1) Loss of privileges, loss of membership, or other
6 sanction provided pursuant to the medical staff
7 bylaws, policies, and procedures of the sanctioning
8 health care provider if the sanctioned health care
9 provider is a member of the sanctioning provider's
10 medical staff and participates in actions covered by
11 this chapter while on the health care facility
12 premises of the sanctioning health care provider other
13 than in the private medical office of the sanctioned
14 health care provider;

15 (2) Termination of lease or other property contract or
16 other nonmonetary remedies provided by lease contract,
17 not including loss or restriction of medical staff
18 privileges or exclusion from a provider panel, if the
19 sanctioned health care provider participates in
20 actions covered by this chapter while on the premises
21 of the sanctioning health care provider or on property



1 that is owned by or under the direct control of the
2 sanctioning health care provider; or

3 (3) Termination of contract or other nonmonetary remedies
4 provided by contract if the sanctioned health care
5 provider participates in actions covered by this
6 chapter while acting in the course and scope of the
7 sanctioned health care provider's capacity as an
8 employee or independent contractor of the sanctioning
9 health care provider; provided that nothing in this
10 paragraph shall be construed to prevent:

11 (A) A health care provider from participating in
12 actions covered by this chapter while acting
13 outside the course and scope of the health care
14 provider's capacity as an employee or independent
15 contractor; or

16 (B) A patient from contracting with the patient's
17 attending provider and consulting provider to act
18 outside the course and scope of either provider's
19 capacity as an employee or independent contractor
20 of the sanctioning health care provider.



1 (d) A health care provider that imposes sanctions pursuant
2 to subsection (c) shall follow all due process and other
3 procedures the sanctioning health care provider may have that
4 are related to the imposition of sanctions on another health
5 care provider.

6 (e) For the purposes of this section:

7 "Notify" means to deliver a separate statement in writing
8 to a health care provider specifically informing the health care
9 provider prior to the health care provider's participation in
10 actions covered by this chapter of the sanctioning health care
11 provider's policy regarding participation in actions covered by
12 this chapter.

13 "Participate in actions covered by this chapter" means to
14 perform the duties of an attending provider pursuant to section
15 -4, the consulting provider function pursuant to section -

16 5, or the counseling referral function pursuant to section -

17 6. The term does not include:

18 (1) Making an initial determination that a patient has a
19 terminal disease and informing the patient of the
20 medical prognosis;



(2) Providing information about this chapter to a patient upon the request of the patient;

(3) Providing a patient, upon the request of the patient, with a referral to another physician; or

(4) Entering into a contract with a patient as the patient's attending provider or consulting provider to act outside of the course and scope of the provider's capacity as an employee or independent contractor of a health care provider.

(f) Action taken pursuant to sections -4 through -6 shall not be the sole basis for disciplinary action under section 453-8 or section 457-12.

§ -20 Prohibited acts; penalties. (a) Any person who intentionally:

(1) Alters a request for a prescription without the authorization of a qualified patient;

(2) Forges a request for a prescription; or

(3) Conceals or destroys the rescission of a request for a prescription;

shall be guilty of a class A felony.



1 (b) Any person who coerces or exerts undue influence on a
2 qualified patient to request a prescription or to destroy a
3 rescission of a request for a prescription shall be guilty of a
4 class A felony.

5 (c) Any person who intentionally alters, forges, conceals,
6 or destroys any request for medication or treatment, any
7 rescission of a request for medication or treatment, or any
8 other evidence or document reflecting a patient's desires and
9 interests:

10 (1) Without authorization of the patient; and

11 (2) With the intent and effect to cause the withholding or
12 withdrawal of life-sustaining medication, treatment,
13 or procedures or of artificially administered
14 nutrition and hydration that hastens the death of the
15 patient,

16 shall be guilty of a class A felony.

17 (d) Any person who, intentionally alters, forges,
18 conceals, or destroys any request for a prescription, rescission
19 of a request for a prescription, or other evidence or document
20 reflecting a qualified patient's desires and interests:

21 (1) Without authorization of the qualified patient; and



1 (2) With the intent or effect of negating the qualified
2 patient's health care decision to obtain a
3 prescription under this chapter,
4 shall be guilty of a misdemeanor.

5 (e) Nothing in this section shall limit any liability for
6 civil damages resulting from any intentional or negligent
7 conduct by any person in violation of this chapter.

8 (f) The penalties in this chapter are cumulative and shall
9 not preclude criminal penalties pursuant to other applicable
10 state law.

11 § -21 **Claims by governmental entity for costs incurred.**

12 Any governmental entity that incurs costs resulting from a
13 person terminating the person's life pursuant to this chapter in
14 a public place shall have a claim against the estate of the
15 person to recover costs and reasonable attorneys' fees related
16 to enforcing the claim.

17 § -22 **Severability.** Any provision of this chapter that
18 is held invalid as to any person or circumstance shall not
19 affect the application of any other provision of this chapter
20 that can be given full effect without the invalid provision or
21 application.



1 § -23 Form of the request. A request for a prescription
2 as authorized by this chapter shall be in substantially the
3 following form:

4 "REQUEST FOR MEDICATION TO END MY LIFE

5 I, _____, am an adult of sound mind.

6 I am suffering from _____, which my attending
7 provider has determined is a terminal disease and that has been
8 medically confirmed by a consulting provider.

9 I have been fully informed of my diagnosis, prognosis, the
10 nature of medication to be prescribed and potential associated
11 risks, the expected result, and the feasible alternatives or
12 additional treatments, including comfort care, hospice care, and
13 pain control.

14 I request that my attending provider prescribe medication
15 that I may self-administer to end my life; provided that my
16 attending provider may assist in the administration of the
17 medication if I am unable to self-administer the medication due
18 to my terminal illness.

19 INITIAL ONE:

20 _____ I have informed my family of my decision and
21 taken their opinions into consideration.



1 _____ I have decided not to inform my family of my
2 decision.

3 _____ I have no family to inform of my decision.

4 I understand that I have the right to rescind this request
5 at any time.

6 I understand the full import of this request and I expect
7 to die when I take the medication to be prescribed. I further
8 understand that although most deaths occur within three hours,
9 my death may take longer and my attending provider has counseled
10 me about this possibility.

11 I make this request voluntarily and without reservation,
12 and I accept full moral responsibility for my actions.

13 Signed: _____

14 Dated: _____

15 DECLARATION OF WITNESSES

16 We declare that the person signing this request:

17 (a) Is personally known to us or has provided proof of
18 identity;

19 (b) Signed this request in our presence;



(c) Appears to be of sound mind and not under duress or to have been induced by fraud, or subjected to undue influence when signing the request; and

(d) Is not a patient for whom either of us is the attending provider.

Witness Date_____

Witness Date_____

NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death and shall not own, operate, or be employed at a health care facility where the person is a patient or resident."

§ -24 Form of final attestation. (a) A final attestation form shall be given to a qualifying patient at the time an attending provider writes the prescription authorized by this chapter and shall be in substantially the following form:

"FINAL ATTESTATION FOR A REQUEST FOR MEDICATION TO END MY LIFE

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending provider has determined is a terminal disease and that has been medically confirmed by a consulting provider.



1 I have been fully informed of my diagnosis, prognosis, the
2 nature of medication to be prescribed and potential associated
3 risks, the expected result, and the feasible alternatives or
4 additional treatment options, including comfort care, hospice
5 care, and pain control.

6 I understand that I am requesting that my attending
7 provider prescribe medication that I may self-administer to end
8 my life; provided that my attending provider may assist in the
9 administration of the medication if I am unable to self-
10 administer the medication due to my terminal illness.

11 INITIAL ONE:

12 _____ I have informed my family of my decision and
13 taken their opinions into consideration.

14 _____ I have decided not to inform my family of my
15 decision.

16 _____ I have no family to inform of my decision.

17 I understand that I have the right to rescind this request
18 at any time.

19 I understand that I still may choose not to ingest the
20 medication prescribed and by signing this form I am under no
21 obligation to ingest the medication prescribed.



1 I am fully aware that the prescribed medication will end my
2 life and while I expect to die when I take the medication
3 prescribed, I also understand that my death may not be immediate
4 and my attending provider has counseled me about this
5 possibility.

6 I make this request voluntarily and without reservation.

7 Signed: _____

8 Dated: _____ "

9 (b) The final attestation form shall be completed by the
10 qualifying patient within forty-eight hours prior to the
11 qualifying patient self-administration of the medication
12 prescribed pursuant to this chapter. Upon the qualifying
13 patient's death, the completed final attestation form shall be
14 delivered by the qualifying patient's health care provider,
15 family member, or other representative to the attending provider
16 for inclusion in the qualifying patient's medical record.

17 § -25 Annual report. The department shall submit to the
18 legislature an annual report no later than twenty days prior to
19 the convening of each regular session. The report shall include
20 but not be limited to:



- 1 (1) An annual analysis of the implementation of this
2 chapter, including any implementation problems; and
3 (2) Any proposed legislation."

4 SECTION 4. Section 327E-13, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) This chapter shall not authorize mercy killing,
7 assisted suicide, euthanasia, or the provision, withholding, or
8 withdrawal of health care, to the extent prohibited by other
9 statutes of this State[-]; provided that this subsection shall
10 not apply to actions taken under chapter _____."

11 SECTION 5. Section 327H-2, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) Nothing in this section shall be construed to:

- 14 (1) Expand the authorized scope of practice of any
15 licensed physician;
16 (2) Limit any reporting or disciplinary provisions
17 applicable to licensed physicians and surgeons who
18 violate prescribing practices; and
19 (3) Prohibit the discipline or prosecution of a licensed
20 physician for:



- 1 (A) Failing to maintain complete, accurate, and
2 current records that document the physical
3 examination and medical history of a patient, the
4 basis for the clinical diagnosis of a patient,
5 and the treatment plan for a patient;
- 6 (B) Writing false or fictitious prescriptions for
7 controlled substances scheduled in the Federal
8 Comprehensive Drug Abuse Prevention and Control
9 Act of 1970, 21 United States Code 801 et seq. or
10 in chapter 329;
- 11 (C) Prescribing, administering, or dispensing
12 pharmaceuticals in violation of the provisions of
13 the Federal Comprehensive Drug Abuse Prevention
14 and Control Act of 1970, 21 United States Code
15 801 et seq. or of chapter 329;
- 16 (D) Diverting medications prescribed for a patient to
17 the licensed physician's own personal use; and
- 18 (E) Causing, or assisting in causing, the suicide,
19 euthanasia, or mercy killing of any individual;
20 provided that ~~[it]~~ it:



1 (i) It is not "causing, or assisting in causing,
2 the suicide, euthanasia, or mercy killing of
3 any individual" to prescribe, dispense, or
4 administer medical treatment for the purpose
5 of treating severe acute pain or severe
6 chronic pain, even if the medical treatment
7 may increase the risk of death, so long as
8 the medical treatment is not also furnished
9 for the purpose of causing, or the purpose
10 of assisting in causing, death for any
11 reason[-]; and

12 (ii) This subparagraph shall not apply to actions
13 taken under chapter ."

14 SECTION 6. Section 707-701.5, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) Except as provided in section 707-701, a person
17 commits the offense of murder in the second degree if the person
18 intentionally or knowingly causes the death of another
19 person[-]; provided that this section shall not apply to actions
20 taken under chapter ."



SECTION 7. Section 707-702, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of manslaughter if:

(a) The person recklessly causes the death of another person; or

(b) The person intentionally causes another person to commit suicide[-];

provided that this section shall not apply to actions taken under chapter ."

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.



1 SECTION 11. This Act shall take effect upon its approval.

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INTRODUCED BY: Allen A. Kuntz

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JAN 24 2018



H.B. NO. 2739

Report Title:

Health; Our Care, Our Choice

Description:

Establishes a regulatory process under which an adult resident of the State with a medically confirmed terminal disease and less than six months to live may choose to obtain a prescription for medication to end the patient's life. Imposes criminal sanctions for tampering with a patient's request for a prescription or coercing a patient to request a prescription

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

