
A BILL FOR AN ACT

RELATING TO ADVANCED PRACTICE REGISTERED NURSES.

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

1 SECTION 1. The legislature finds that advanced practice
2 registered nurses provide a wide variety of health care services
3 to people across the State. The legislature further finds that
4 existing law requires each hospital within the State to allow
5 advanced practice registered nurses to practice at the hospital
6 within the full scope of their authorized practice, including
7 practice as primary care providers. Advanced practice
8 registered nurses are also recognized as participating primary
9 care providers for insurance purposes under the State's
10 insurance code. Despite these facts, certain sections of
11 existing law have not been amended to include advanced practice
12 registered nurses in areas concerning mental health directives
13 and disability determinations for purposes of income tax laws.
14 Accordingly, these statutes should be expanded to authorize
15 increased participation by advanced practice registered nurses
16 and to recognize appropriately trained advanced practice
17 registered nurses as the primary care providers that they are.



1 The legislature further finds that authorizing increased
2 participation by advanced practice registered nurses in certain
3 circumstances will further enable improved access to health care
4 services, expedite the processing of paperwork, and provide
5 optimal care at the initial point of access for Hawaii patients,
6 especially in rural and medically underserved areas.

7 The purpose of this Act is to improve patient access to
8 medical care and services by:

- 9 (1) Authorizing advanced practice registered nurses to
10 order and certify home health care for medicare
11 patients;
- 12 (2) Authorizing advanced practice registered nurses to
13 certify whether a person is totally disabled under the
14 state income tax code;
- 15 (3) Authorizing advanced practice registered nurses to
16 make capacity determinations for purposes of advance
17 mental health care directives; and
- 18 (4) Adding advanced practice registered nurses as primary
19 providers in advance mental health care directives.



1 SECTION 2. Chapter 457, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§457- Advanced practice registered nurses; home health
5 care services. Notwithstanding any other law to the contrary,
6 an advanced practice registered nurse as authorized by 42 U.S.C.
7 1395f, and who practices within the appropriate nurse's practice
8 specialty, may order and certify home health care for medicare
9 patients; provided that the nurse has a valid, unrevoked, and
10 unsuspended license obtained in accordance with this chapter."

11 SECTION 3. Section 235-1, Hawaii Revised Statutes, is
12 amended by amending the definition of "person totally disabled"
13 to read as follows:

14 ""Person totally disabled" means a person who is totally
15 and permanently disabled, either physically or mentally, which
16 results in the person's inability to engage in any substantial
17 gainful business or occupation.

18 The disability shall be certified [~~to~~] by a:

19 (1) Physician or osteopathic physician licensed under
20 chapter 453[+] or an advanced practice registered
21 nurse licensed under chapter 457;



1 (2) Qualified out-of-state physician or advanced practice
2 registered nurse who is currently licensed to practice
3 in the state in which the physician or advanced
4 practice registered nurse resides; or

5 (3) Commissioned medical officer in the United States
6 Army, Navy, Marine Corps, or Public Health Service,
7 engaged in the discharge of the officer's official
8 duty.

9 Certification shall be on forms prescribed by the department of
10 taxation."

11 SECTION 4. Section 327G-2, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding a new definition to be appropriately inserted
14 and to read:

15 "Advanced practice registered nurse" means a person
16 licensed as an advanced practice registered nurse pursuant to
17 chapter 457."

18 2. By amending the definition of "primary physician" to
19 read:

20 "Primary [~~physician~~] provider" means a physician or
21 advanced practice registered nurse designated by a principal or



1 the principal's agent or guardian to have primary responsibility
2 for the principal's health care, including mental health care
3 or, in the absence of a designation or if the designated
4 physician or advanced practice registered nurse is not
5 reasonably available, a physician or advanced practice
6 registered nursed who undertakes the responsibility."

7 3. By amending the definition of "supervising health care
8 provider" to read:

9 "Supervising health care provider" means the primary
10 [~~physieian~~] provider or the [~~physieian's~~] primary provider's
11 designee, or the health care provider or the provider's designee
12 who has undertaken primary responsibility for a principal's
13 health care, that includes mental health care."

14 SECTION 5. Section 327G-7, Hawaii Revised Statutes, is
15 amended by amending subsections (d) and (e) to read as follows:

16 "(d) For the purposes of this chapter, the determination
17 that a principal lacks capacity shall be made by the supervising
18 health care provider who is a physician or advanced practice
19 registered nurse and one other physician, advanced practice
20 registered nurse, or licensed psychologist after both have
21 conducted an examination of the principal. Upon examination and



1 a joint determination that the principal lacks capacity, the
2 supervising health care provider shall promptly note the
3 determination in the principal's medical record, including the
4 facts and professional opinions that form the basis of the
5 determination, and shall promptly notify the agent that the
6 principal lacks capacity and that the advance mental health care
7 directive has been invoked.

8 (e) The determination that a principal has recovered
9 capacity shall be made by the supervising health care provider
10 who is a physician[-] or advanced practice registered nurse.
11 The supervising health care provider shall promptly note the
12 recovery of capacity in the principal's medical record, and
13 shall promptly notify the agent that the principal has recovered
14 capacity."

15 SECTION 6. Section 327G-10, Hawaii Revised Statutes, is
16 amended by amending subsection (e) to read as follows:

17 "(e) A physician [~~or~~], licensed psychologist, or advanced
18 practice registered nurse, who in good faith determines that the
19 principal has or lacks capacity in accordance with this chapter
20 to decide whether to invoke an advance mental health care
21 directive, is not subject to criminal prosecution, civil



1 liability, or professional disciplinary action for making and
2 acting upon that determination."

3 SECTION 7. Section 327G-14, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§327G-14 Optional form. The following sample form may be
6 used to create an advance mental health care directive. This
7 sample form may be duplicated, or modified to suit the needs of
8 the person. Any written document that contains the substance of
9 the following information may be used in an advance mental
10 health care directive:

11 "ADVANCE MENTAL HEALTH CARE DIRECTIVE

12 Explanation
13

14 You have the right to give instructions about your own
15 mental health care. You also have the right to name someone
16 else to make mental health treatment decisions for you. This
17 form lets you do either or both of these things. It also lets
18 you express your wishes regarding the designation of your health
19 care providers. If you use this form, you may complete or
20 modify all or any part of it. You are free to use a different
21 form.
22



1 Part 1 of this form is a list of options you may designate
2 as part of your mental health care and treatment. For ease of
3 designating specific instructions, mark those options in Part 1.

4 Part 2 of this form is a power of attorney for mental
5 health care. This lets you name another individual as your
6 agent to make mental health treatment decisions for you, if you
7 become incapable of making your own decisions, or if you want
8 someone else to make those decisions for you now, even though
9 you are still capable of making your own decisions. You may
10 name alternate agents to act for you if your first choice is not
11 willing, able, or reasonably available to make decisions for
12 you. Unless related to you, your agent may not be an owner,
13 operator, or employee of a health care institution where you are
14 receiving care.

15 You may allow your agent to make all mental health
16 treatment decisions for you. However, if you wish to limit the
17 authority of your agent, you may specify those limitations on
18 the form. If you do not limit the authority of your agent, your
19 agent will have the right to:



- 1 (1) Consent or refuse consent to any care, treatment,
2 service, or procedure to maintain, diagnose, or
3 otherwise affect a mental condition;
- 4 (2) Select or discharge health care providers and
5 institutions;
- 6 (3) Approve or disapprove diagnostic tests, surgical
7 procedures, and programs of medication; and
- 8 (4) Approve or disapprove of electroconvulsive treatment.

9 Part 3 of this form lets you give specific instructions
10 about any aspect of your mental health care and treatment.
11 Choices are provided for you to express your wishes regarding
12 the provision, withholding, or withdrawal of medication and
13 treatment. Space is provided for you to add to the choices you
14 have made or for you to write out any additional wishes.

15 Part 4 of this form must be completed in order to activate
16 the advance mental health care directive. After completing this
17 form, sign and date the form at the end and have the form
18 witnessed by one or both of the two methods listed below. Give
19 a copy of the signed and completed form to your physician[?] or
20 advanced practice registered nurse, to any other health care
21 providers you may have, to any health care institution at which



1 you are receiving care, and to any mental health care agents you
2 have named. You should talk to the persons you have named as
3 agents to make sure that they understand your wishes and are
4 willing to take the responsibility.

5 You have the right to revoke this advance mental health
6 care directive or replace this form at any time, unless
7 otherwise specified in writing in the advance mental health care
8 directive.

9 If you are in imminent danger of causing bodily harm to
10 yourself or others, or have been involuntarily committed to a
11 health care institution for mental health treatment, the advance
12 mental health care directive will not apply.

13
14 PART 1
15 CHECKLIST OF MENTAL HEALTH CARE OPTIONS
16

17 NOTE TO PROVIDER: The following is a checklist of selections I
18 have made regarding my mental health care and treatment. I
19 include this statement to express my strong desire for you to
20 acknowledge and abide by my rights, under state and federal
21 laws, to influence decisions about the care I will receive.
22 (Declarant: Put a check mark in the left-hand column for each
23 section you have completed.)

24
25 Designation of my mental health care agent(s).

26 Authority granted to my agent(s).

27 My preference for a court appointed guardian.



TREATMENT DECISIONS

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(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make mental health care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a mental health care decision for me, I designate as my first alternate agent:

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)



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(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a mental health care decision for me, I designate as my second alternate agent:

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all mental health care treatment decisions for me, including decisions to provide, withhold, or withdraw medication and treatment, and all other forms of mental health care, except as I state here:



1 _____
2 _____

3 (Add additional sheets if needed.)

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5 (3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's
6 authority becomes effective when my supervising health care
7 provider who is a physician or advanced practice registered
8 nurse and one other physician, advanced practice registered
9 nurse, or licensed psychologist determine that I am unable to
10 make my own mental health care decisions.

11 (4) AGENT'S OBLIGATION: My agent shall make mental health
12 care decisions for me in accordance with this power of attorney
13 for mental health care, any instructions I give in Part 2 of
14 this form, and my other wishes to the extent known to my agent.
15 To the extent my wishes are unknown, my agent shall make mental
16 health care decisions for me in accordance with what my agent
17 determines to be in my best interest. In determining my best
18 interest, my agent shall consider my personal values to the
19 extent known to my agent.

20 (5) NOMINATION OF GUARDIAN: If a guardian needs to be
21 appointed for me by a court, I nominate the agent designated in
22 this form. If that agent is not willing, able, or reasonably
23 available to act as guardian, I nominate the alternate agents
24 whom I have named, in the order designated.

25
26 PART 3
27 INSTRUCTIONS FOR MENTAL HEALTH CARE AND TREATMENT

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29 If you are satisfied to allow your agent to determine what
30 is best for you, you need not fill out this part of the form.
31 If you do fill out this part of the form, you may strike any
32 wording you do not want.

33 (6) My preference of treating facility and alternatives to
34 hospitalization:

35 (7) My preferences about the physicians, advanced practice
36 registered nurses, or other mental health care providers who
37 will treat me if I am hospitalized:



- 1 (8) My preferences regarding medications:
- 2 (9) My preferences regarding electroconvulsive therapy
- 3 (ECT or shock treatment):
- 4 (10) My preferences regarding emergency interventions
- 5 (seclusion, restraint, medications):
- 6 (11) Consent for experimental drugs or treatments:
- 7 (12) Who should be notified immediately of my admission to a
- 8 facility:
- 9 (13) Who should be prohibited from visiting me:
- 10 (14) My preferences for care and temporary custody of my
- 11 children or pets:
- 12 (15) My preferences about revocation of my advance mental
- 13 health care directive during a period of incapacity:
- 14 (16) OTHER WISHES: (If you do not agree with any of the
- 15 optional choices above and wish to write your own, or if you
- 16 wish to add to the instructions you have given above, you may do
- 17 so here.) I direct that:

18

19 _____

20 _____

21 _____

(Add additional sheets if needed.)

PART 4
WITNESSES AND SIGNATURES

27 (17) EFFECT OF COPY: A copy of this form has the same
28 effect as the original.

29 (18) SIGNATURES: Sign and date the form here:

30 _____

31 _____

32 (date) (sign your name)

33 _____

34 _____



1 (address) (print your name)
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3 _____

4 (city) (state)
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7 (19) WITNESSES: This power of attorney will not be valid
8 for making mental health care decisions unless it is either:
9 (a) signed by two qualified adult witnesses who are personally
10 known to you and who are present when you sign or acknowledge
11 your signature; or (b) acknowledged before a notary public in
12 the State.

13
14 AFFIRMATION OF WITNESSES

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16 Witness 1

17
18 I declare under penalty of false swearing pursuant to section
19 710-1062, Hawaii Revised Statutes, that the principal is
20 personally known to me, that the principal signed or
21 acknowledged this power of attorney in my presence, that the
22 principal appears to be of sound mind and under no duress,
23 fraud, or undue influence, that I am not the person appointed as
24 agent by this document, and that I am not a health care
25 provider, nor an employee of a health care provider or facility.
26 I am not related to the principal by blood, marriage, or
27 adoption, and to the best of my knowledge, I am not entitled to
28 any part of the estate of the principal upon the death of the
29 principal under a will now existing or by operation of law.

30
31 _____
32 (date) (sign your name)
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34 _____
35 (address) (print your name)
36
37 _____



1 (city) (state)

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Witness 2

5 I declare under penalty of false swearing pursuant to section
6 710-1062, Hawaii Revised Statutes, that the principal is
7 personally known to me, that the principal signed or
8 acknowledged this power of attorney in my presence, that the
9 principal appears to be of sound mind and under no duress,
10 fraud, or undue influence, that I am not the person appointed as
11 agent by this document, and that I am not a health care
12 provider, nor an employee of a health care provider or facility.
13 I am not related to the principal by blood, marriage, or
14 adoption, and to the best of my knowledge, I am not entitled to
15 any part of the estate of the principal upon the death of the
16 principal under a will now existing or by operation of law.

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18

19 (date) (sign your name)

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22 (address) (print your name)

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25 (city) (state)

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DECLARATION OF NOTARY

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State of Hawaii

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County of _____

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On this _____ day of _____, in the year
_____, before me, _____ (insert name of notary
public) appeared _____, personally known to me (or

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proved to me on the basis of satisfactory evidence) to be the
person whose name is subscribed to this instrument, and
acknowledged that he or she executed it.

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1 Notary Seal

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(Signature of Notary Public)"

5 SECTION 8. Statutory material to be repealed is bracketed

6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Advanced Practice Registered Nurses; Disability; Income Tax Code; Mental Capacity Determinations; Advanced Mental Health Directives

Description:

Authorizes advanced practice registered nurses to order and certify home health care for medicare patients. Authorizes advanced practice registered nurses to certify whether a person is totally disabled under the state income tax code. Authorizes advanced practice registered nurses to make capacity determinations. Adds advanced practice registered nurses as primary providers in advance mental health care directives.
(SD1)

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