
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, assess, and certify home health care
11 eligibility for medicare beneficiaries;
- 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; medicare certifications. Notwithstanding any
6 other law to the contrary, an advanced practice registered
7 nurse, as authorized by title 42 U.S.C. section 1395f, and who
8 practices within the nurse's appropriate practice specialty, may
9 order, assess, and certify home health care eligibility for
10 medicare beneficiaries; provided that the nurse has a valid,
11 unrevoked, and unsuspended license obtained in accordance with
12 this chapter."

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

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

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



- 1 (1) Physician or osteopathic physician licensed under
2 chapter 453 [7] or an advanced practice registered
3 nurse licensed under chapter 457;
- 4 (2) Qualified out-of-state physician or advanced practice
5 registered nurse who is currently licensed to practice
6 in the state in which the physician or advanced
7 practice registered nurse resides; or
- 8 (3) Commissioned medical officer in the United States
9 Army, Navy, Marine Corps, or Public Health Service,
10 engaged in the discharge of the officer's official
11 duty.

12 Certification shall be on forms prescribed by the department of
13 taxation."

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

16 1. By adding a new definition to be appropriately inserted
17 and to read:

18 "Advanced practice registered nurse" means a person
19 licensed as an advanced practice registered nurse pursuant to
20 chapter 457."



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

3 "Primary [physician] provider" means a physician or
4 advanced practice registered nurse designated by a principal or
5 the principal's agent or guardian to have primary responsibility
6 for the principal's health care, including mental health care
7 or, in the absence of a designation or if the designated
8 physician or advanced practice registered nurse is not
9 reasonably available, a physician or advanced practice
10 registered nursed who undertakes the responsibility."

11 3. By amending the definition of "supervising health care
12 provider" to read:

13 "Supervising health care provider" means the primary
14 [physician] provider or the [physician's] primary provider's
15 designee, or the health care provider or the provider's designee
16 who has undertaken primary responsibility for a principal's
17 health care, that includes mental health care."

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

20 "(d) For the purposes of this chapter, the determination
21 that a principal lacks capacity shall be made by the supervising



1 health care provider who is a physician or advanced practice
2 registered nurse and one other physician, advanced practice
3 registered nurse, or licensed psychologist after both have
4 conducted an examination of the principal. Upon examination and
5 a joint determination that the principal lacks capacity, the
6 supervising health care provider shall promptly note the
7 determination in the principal's medical record, including the
8 facts and professional opinions that form the basis of the
9 determination, and shall promptly notify the agent that the
10 principal lacks capacity and that the advance mental health care
11 directive has been invoked.

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

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



1 form lets you do either or both of these things. It also lets
2 you express your wishes regarding the designation of your health
3 care providers. If you use this form, you may complete or
4 modify all or any part of it. You are free to use a different
5 form.

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

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

20 You may allow your agent to make all mental health
21 treatment decisions for you. However, if you wish to limit the



1 authority of your agent, you may specify those limitations on
2 the form. If you do not limit the authority of your agent, your
3 agent will have the right to:

4 (1) Consent or refuse consent to any care, treatment,
5 service, or procedure to maintain, diagnose, or
6 otherwise affect a mental condition;

7 (2) Select or discharge health care providers and
8 institutions;

9 (3) Approve or disapprove diagnostic tests, surgical
10 procedures, and programs of medication; and

11 (4) Approve or disapprove of electroconvulsive treatment.

12 Part 3 of this form lets you give specific instructions
13 about any aspect of your mental health care and treatment.

14 Choices are provided for you to express your wishes regarding
15 the provision, withholding, or withdrawal of medication and
16 treatment. Space is provided for you to add to the choices you
17 have made or for you to write out any additional wishes.

18 Part 4 of this form must be completed in order to activate
19 the advance mental health care directive. After completing this
20 form, sign and date the form at the end and have the form
21 witnessed by one or both of the two methods listed below. Give



1 a copy of the signed and completed form to your physician[7] or
 2 advanced practice registered nurse, to any other health care
 3 providers you may have, to any health care institution at which
 4 you are receiving care, and to any mental health care agents you
 5 have named. You should talk to the persons you have named as
 6 agents to make sure that they understand your wishes and are
 7 willing to take the responsibility.

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

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

16
 17 PART 1
 18 CHECKLIST OF MENTAL HEALTH CARE OPTIONS
 19

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



- 1
- 2 ___ Designation of my mental health care agent(s).
- 3 ___ Authority granted to my agent(s).
- 4 ___ My preference for a court appointed guardian.
- 5 ___ My preference of treating facility and alternatives to
- 6 hospitalization.
- 7 ___ My preferences about the physicians, advanced practice
- 8 registered nurses, or other mental health care
- 9 providers who will treat me if I am hospitalized.
- 10 ___ My preferences regarding medications.
- 11 ___ My preferences regarding electroconvulsive therapy
- 12 (ECT or shock treatment).
- 13 ___ My preferences regarding emergency interventions
- 14 (seclusion, restraint, medications).
- 15 ___ Consent for experimental drugs or treatments.
- 16 ___ Who should be notified immediately of my admission to
- 17 a facility.
- 18 ___ Who should be prohibited from visiting me.
- 19 ___ My preferences for care and temporary custody of my
- 20 children or pets.



1 ___ Other instructions about mental health care and
2 treatment.

3

4

PART 2

5

DURABLE POWER OF ATTORNEY FOR MENTAL HEALTH
6 TREATMENT DECISIONS

7

8

9

10

11

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

12

13

(name of individual you choose as agent)

14

15

16

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

17

18

19

(home phone) (work phone)

20

21

22

23

24

25

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:

26



1 (name of individual you choose as first alternate agent)

2

3

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

5

6

7 (home phone) (work phone)

8

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

13

14

15 (name of individual you choose as second alternate agent)

16

17

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

19

20

21 (home phone) (work phone)

22



1 (2) AGENT'S AUTHORITY: My agent is authorized to make all
2 mental health care treatment decisions for me, including
3 decisions to provide, withhold, or withdraw medication and
4 treatment, and all other forms of mental health care, except as
5 I state here:
6

7 _____
8 _____
9 _____

10 (Add additional sheets if needed.)

11

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

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

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

32
33
34
35

PART 3
INSTRUCTIONS FOR MENTAL HEALTH CARE AND TREATMENT



- 1 If you are satisfied to allow your agent to determine what
- 2 is best for you, you need not fill out this part of the form.
- 3 If you do fill out this part of the form, you may strike any
- 4 wording you do not want.
- 5 (6) My preference of treating facility and alternatives to
- 6 hospitalization:
- 7 (7) My preferences about the physicians, advanced practice
- 8 registered nurses, or other mental health care providers who
- 9 will treat me if I am hospitalized:
- 10 (8) My preferences regarding medications:
- 11 (9) My preferences regarding electroconvulsive therapy
- 12 (ECT or shock treatment):
- 13 (10) My preferences regarding emergency interventions
- 14 (seclusion, restraint, medications):
- 15 (11) Consent for experimental drugs or treatments:
- 16 (12) Who should be notified immediately of my admission to a
- 17 facility:
- 18 (13) Who should be prohibited from visiting me:
- 19 (14) My preferences for care and temporary custody of my
- 20 children or pets:
- 21 (15) My preferences about revocation of my advance mental
- 22 health care directive during a period of incapacity:
- 23 (16) OTHER WISHES: (If you do not agree with any of the
- 24 optional choices above and wish to write your own, or if you
- 25 wish to add to the instructions you have given above, you may do
- 26 so here.) I direct that:

27

28

29

30

31

(Add additional sheets if needed.)

32

33

PART 4

34

WITNESSES AND SIGNATURES

35



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

3 (18) SIGNATURES: Sign and date the form here:
4
5

6 (date)

(sign your name)

7
8

9 (address)

(print your name)

10
11

12 (city) (state)

13
14
15 (19) WITNESSES: This power of attorney will not be valid
16 for making mental health care decisions unless it is either:
17 (a) signed by two qualified adult witnesses who are personally
18 known to you and who are present when you sign or acknowledge
19 your signature; or (b) acknowledged before a notary public in
20 the State.

21
22 AFFIRMATION OF WITNESSES

23
24 Witness 1

25
26 I declare under penalty of false swearing pursuant to section
27 710-1062, Hawaii Revised Statutes, that the principal is
28 personally known to me, that the principal signed or
29 acknowledged this power of attorney in my presence, that the
30 principal appears to be of sound mind and under no duress,
31 fraud, or undue influence, that I am not the person appointed as
32 agent by this document, and that I am not a health care
33 provider, nor an employee of a health care provider or facility.
34 I am not related to the principal by blood, marriage, or
35 adoption, and to the best of my knowledge, I am not entitled to
36 any part of the estate of the principal upon the death of the
37 principal under a will now existing or by operation of law.
38



1 _____

2 (date) (sign your name)

3
4 _____

5 (address) (print your name)

6
7 _____

8 (city) (state)

9
10 Witness 2

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

24
25 _____

26 (date) (sign your name)

27
28 _____

29 (address) (print your name)

30
31 _____

32 (city) (state)

33
34 DECLARATION OF NOTARY

35



1 State of Hawaii
 2 County of _____
 3 On this _____ day of _____, in the year
 4 _____, before me, _____ (insert name of notary
 5 public) appeared _____, personally known to me (or
 6 proved to me on the basis of satisfactory evidence) to be the
 7 person whose name is subscribed to this instrument, and
 8 acknowledged that he or she executed it.
 9

10 Notary Seal

11

12

13

(Signature of Notary Public)"

14 SECTION 8. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

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



Report Title:

Advanced Practice Registered Nurses; Home Health Care; Eligibility; Medicare; Disability; Income Tax Code; Mental Capacity Determinations; Advanced Mental Health Directives

Description:

Authorizes advanced practice registered nurses to order, assess, and certify home health care eligibility for medicare beneficiaries. 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. (SD2)

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