
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 in 2018, the State
2 passed the Our Care, Our Choice Act to ensure that all
3 terminally ill individuals have access to the full-range of end-
4 of-life care options. The Our Care, Our Choice Act allows
5 mentally capable, terminally ill individuals with six months or
6 less to live to voluntarily request and receive prescription
7 medication that allows the person to die in a peaceful, humane,
8 and dignified manner.

9 The legislature further finds that Hawaii's unique
10 geography and the State's shortage of physicians create barriers
11 to access for qualified terminally ill individuals. Finding a
12 physician may be burdensome, especially for individuals on the
13 neighbor islands. Hawaii gives advanced practice registered
14 nurses full scope of practice licensure and an expansive scope
15 of practice to physician assistants; however, they do not have
16 authority to administer medical-aid-in-dying, thereby further
17 limiting access to care for many individuals. Furthermore,



1 evidence from other states that authorize medical-aid-in-dying
2 demonstrates that even with full access to a supportive health
3 care facility and providers, a high percentage of terminally ill
4 individuals die while waiting to complete the regulatory
5 requirements to qualify for medication under the respective
6 state laws. Hawaii has the longest mandatory waiting period
7 amongst all ten medical-aid-in-dying authorized states and the
8 District of Columbia. Many patients are not surviving the
9 mandatory twenty days.

10 The purpose of this Act is to amend the Our Care, Our
11 Choice Act to:

- 12 (1) Authorize advanced practice registered nurses and
13 physician assistants, in addition to physicians, to
14 practice medical-aid-in-dying in accordance with their
15 scope of practice and prescribing authority;
- 16 (2) Authorize advanced practice registered nurses with a
17 psychiatric or clinical nurse specialization and
18 physician assistants, in addition to psychiatrists,
19 psychologists, and clinical social workers, to provide
20 counseling to a qualified patient;



1 (3) Require a provider prescribing medications for
2 medical-aid-in-dying to conduct an initial in-person
3 visit with the patient;

4 (4) Reduce the mandatory waiting period between oral
5 requests from twenty days to fifteen days;

6 (5) Provide an expedited pathway for terminally ill
7 qualified patients who are not expected to survive the
8 mandatory waiting period; and

9 (6) Prohibit the disclosure, discovery, or compelled
10 production of information collected or retained
11 pursuant to incidental or routine communication
12 between the department of health and qualified
13 patients or providers.

14 SECTION 2. Section 327L-1, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By adding two new definitions to be appropriately
17 inserted and to read:

18 "Advanced practice registered nurse" means a registered
19 nurse licensed to practice in the State who has met the
20 qualifications of chapter 457 and who, because of advanced
21 education and specialized clinical training, is authorized to



1 assess, screen, diagnose, order, utilize, or perform medical,
2 therapeutic, preventive, or corrective measures, including
3 prescribing medication.

4 "Physician assistant" means a person licensed to practice
5 medicine under the supervision of a physician or osteopathic
6 physician, as required by section 453-5.3."

7 2. By amending the definition of "attending provider" to
8 read:

9 "Attending provider" means a physician licensed pursuant
10 to chapter 453, advanced practice registered nurse licensed
11 pursuant to chapter 457, or physician assistant licensed
12 pursuant to section 453-5.3 who has responsibility for the care
13 of the patient and treatment of the patient's terminal disease."

14 3. By amending the definitions of "consulting provider"
15 and "counseling" to read:

16 "Consulting provider" means a physician licensed pursuant
17 to chapter 453 who is qualified by specialty or experience to
18 make a professional diagnosis and prognosis regarding the
19 patient's disease[-], advanced practice registered nurse
20 licensed pursuant to chapter 457 who is qualified by specialty



1 or experience to diagnose and prescribe medication, or physician
2 assistant licensed pursuant to section 453-5.3.

3 "Counseling" means one or more consultations, which may be
4 provided through telehealth, as necessary between a psychiatrist
5 licensed under chapter 453, psychologist licensed under chapter
6 465, ~~[or]~~ clinical social worker licensed pursuant to chapter
7 467E, advanced practice registered nurse with a psychiatric or
8 clinical nurse specialization licensed under chapter 457, or
9 physician assistant licensed under section 453-5.3, and a
10 patient for the purpose of determining that the patient is
11 capable, and that the patient does not appear to be suffering
12 from undertreatment or nontreatment of depression or other
13 conditions ~~[which]~~ that may interfere with the patient's ability
14 to make an informed decision pursuant to this chapter."

15 SECTION 3. Section 327L-2, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~+~~]**§327L-2**[~~+~~] **Oral and written requests for medication;**
18 **initiated.** An adult who is capable, is a resident of the State,
19 and has been determined by an attending provider and consulting
20 provider to be suffering from a terminal disease, and who has



1 voluntarily expressed the adult's wish to die, may, pursuant to
2 section 327L-9, submit:

3 (1) Two oral requests, a minimum of [~~twenty~~] fifteen days
4 apart; and

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

10 SECTION 4. Section 327L-4, Hawaii Revised Statutes, is
11 amended by amending its title and subsection (a) to read as
12 follows:

13 "[~~§~~327L-4~~]~~ **Attending provider; duties.** (a) The
14 attending provider shall:

15 (1) Make the initial in-person determination of whether a
16 patient has a terminal disease, is capable of medical
17 decision-making, and has made the request for the
18 prescription voluntarily;

19 (2) Require that the patient demonstrate residency
20 pursuant to section 327L-13;



- 1 (3) To ensure that the patient is making an informed
- 2 decision, inform the patient of the:
- 3 (A) Patient's medical diagnosis;
- 4 (B) Patient's prognosis;
- 5 (C) Potential risks associated with taking the
- 6 medication to be prescribed;
- 7 (D) Probable result of taking the medication to be
- 8 prescribed;
- 9 (E) Possibility that the individual may choose not to
- 10 obtain the medication or may obtain the
- 11 medication but may decide not to use it; and
- 12 (F) Feasible alternatives or additional treatment
- 13 opportunities, including but not limited to
- 14 comfort care, hospice care, and pain control;
- 15 (4) Refer the patient to a consulting provider for medical
- 16 confirmation of the diagnosis, and for a determination
- 17 that the patient is capable and acting voluntarily;
- 18 (5) Refer the patient for counseling;
- 19 (6) Recommend that the patient notify next of kin;
- 20 (7) Counsel the patient about the importance of having
- 21 another person present when the qualified patient



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

4 (8) Inform the patient that a qualified patient may
5 rescind the request at any time and in any manner, and
6 offer the qualified patient an opportunity to rescind
7 the request at the time of the qualified patient's
8 second oral request made pursuant to section 327L-9;

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

12 (10) Fulfill the medical record documentation requirements
13 of section 327L-12;

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

19 (12) Either:

20 (A) Dispense medications directly, including

21 ancillary medications intended to facilitate the



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

- 8 (B) With the qualified patient's written consent:
- 9 (i) Contact a pharmacist of the qualified
 - 10 patient's choice and inform the pharmacist
 - 11 of the prescription; and
 - 12 (ii) Transmit the written prescription
 - 13 personally, by mail, or electronically to
 - 14 the pharmacist, who shall dispense the
 - 15 medication to either the qualified patient,
 - 16 the attending provider, or an expressly
 - 17 identified agent of the qualified patient."

18 SECTION 5. Section 327L-9, Hawaii Revised Statutes, is
 19 amended to read as follows:

20 " [+]§327L-9[+] Written and oral requests. To receive a
 21 prescription for medication that a qualified patient may self-



1 administer to end the qualified patient's life pursuant to this
2 chapter, a qualified patient shall have made an oral request and
3 a written request, and reiterate the oral request to the
4 qualified patient's attending provider not less than [~~twenty~~
5 fifteen days after making the initial oral request. At the time
6 the qualified patient makes the second oral request, the
7 attending provider shall offer the qualified patient an
8 opportunity to rescind the request."

9 SECTION 6. Section 327L-11, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~[+]§327L-11[+]~~ **Waiting periods.** [~~Not~~] (a) Except as
12 otherwise provided in subsection (c), not less than [~~twenty~~
13 fifteen days shall elapse between the qualified patient's
14 initial oral request and the taking of steps to make available a
15 prescription pursuant to section 327L-4(a)(12).

16 (b) No less than forty-eight hours shall elapse between
17 the qualified patient's written request and the taking of steps
18 to make available a prescription pursuant to section
19 327L-4(a)(12).

20 (c) If the qualified patient's attending provider attests
21 that the qualified patient will, within a reasonable medical



1 judgment, die within fifteen days after making the initial oral
2 request, the fifteen day waiting period shall be waived and the
3 qualified patient may reiterate the oral request to the
4 attending provider at any time after making the initial oral
5 request."

6 SECTION 7. Section 327L-14, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

8 "(c) The department shall annually collect and review all
9 information submitted pursuant to this chapter. The information
10 collected shall be confidential and shall be collected in [~~such~~]
11 a manner that protects the privacy of all qualified patients,
12 the qualified patients' family, and any attending provider,
13 consulting provider, or counselor involved with a qualified
14 patient pursuant to this chapter. Information collected
15 pursuant to this [~~section~~] chapter by the department or retained
16 as the result of incidental or routine communication with
17 providers and qualified patients shall not be disclosed,
18 discoverable, or compelled to be produced in any civil,
19 criminal, administrative, or other proceeding."

20 SECTION 8. Section 327L-19, Hawaii Revised Statutes, is
21 amended by amending subsection (e) to read as follows:



1 "(e) For the purposes of this section:

2 "Notify" means to deliver a separate statement in writing
3 to a health care provider specifically informing the health care
4 provider [~~prior to~~] before the health care provider's
5 participation in actions covered by this chapter of the health
6 care facility's policy regarding participation in actions
7 covered by this chapter.

8 [~~"Participate~~] "Participation in actions covered by this
9 chapter" means to perform the duties of an attending provider
10 pursuant to section 327L-4, the consulting provider function
11 pursuant to section 327L-5, or the counseling referral function
12 or counseling pursuant to section 327L-6. The term does not
13 include:

- 14 (1) Making an initial determination that a patient has a
15 terminal disease and informing the patient of the
16 medical prognosis;
- 17 (2) Providing information about this chapter to a patient
18 upon the request of the patient;
- 19 (3) Providing a patient, upon the request of the patient,
20 with a referral to another [~~physician,~~] provider; or



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

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

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

14 SECTION 11. This Act shall take effect on July 1, 2060.



Report Title:

Our Care, Our Choice Act; Advanced Practice Registered Nurses;
Physician Assistants; Mandatory Waiting Period; Information

Description:

Authorizes advanced practice registered nurses and physician assistants to practice medical aid in dying or provide counseling to a qualified patient. Requires a prescribing provider to conduct an initial visit in-person. Amends the mandatory waiting period between oral requests and the provision of a prescription. Prohibits the disclosure, discovery, or compelled production of information collected or retained pursuant to incidental or routine communication between DOH and qualified patients or providers. Effective 7/1/2060. (SD1)

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