
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 attending providers to make an initial
- 2 determination of whether a patient has a terminal
- 3 disease, is capable of medical decision-making, and
- 4 has made the request for the prescription voluntarily,
- 5 provided that this initial determination may be made
- 6 in-person or via telehealth;
- 7 (4) Reduce the mandatory waiting period between oral
- 8 requests from twenty days to fifteen days;
- 9 (5) Provide an expedited pathway for terminally ill
- 10 qualified patients who are not expected to survive the
- 11 mandatory waiting period; and
- 12 (6) Prohibit the disclosure, discovery, or compelled
- 13 production of information collected or retained
- 14 pursuant to incidental or routine communication
- 15 between the department of health and qualified
- 16 patients or providers.

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

19 1. By adding two new definitions to be appropriately
20 inserted and to read:



1 "Advanced practice registered nurse" means a registered
2 nurse licensed to practice in the State who has met the
3 qualifications of chapter 457 and who, because of advanced
4 education and specialized clinical training, is authorized to
5 assess, screen, diagnose, order, utilize, or perform medical,
6 therapeutic, preventive, or corrective measures, including
7 prescribing medication.

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

11 2. By amending the definition of "attending provider" to
12 read:

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

18 3. By amending the definitions of "consulting provider"
19 and "counseling" to read:

20 "Consulting provider" means a physician licensed pursuant
21 to chapter 453 who is qualified by specialty or experience to



1 make a professional diagnosis and prognosis regarding the
2 patient's disease[-], advanced practice registered nurse
3 licensed pursuant to chapter 457 who is qualified by specialty
4 or experience to diagnose and prescribe medication, or physician
5 assistant licensed pursuant to section 453-5.3.

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

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

20 "[~~§~~327L-2[~~]~~] **Oral and written requests for medication;**
21 **initiated.** An adult who is capable, is a resident of the State,



1 and has been determined by an attending provider and consulting
2 provider to be suffering from a terminal disease, and who has
3 voluntarily expressed the adult's wish to die, may, pursuant to
4 section 327L-9, submit:

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

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

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

15 "~~{}~~§327L-4~~{}~~ **Attending provider; duties.** (a) The
16 attending provider shall:

17 (1) Make the initial determination of whether a patient
18 has a terminal disease, is capable of medical
19 decision-making, and has made the request for the
20 prescription voluntarily; provided that this initial
21 determination may be made in-person or via telehealth;



- 1 (2) Require that the patient demonstrate residency
- 2 pursuant to section 327L-13;
- 3 (3) To ensure that the patient is making an informed
- 4 decision, inform the patient of the:
- 5 (A) Patient's medical diagnosis;
- 6 (B) Patient's prognosis;
- 7 (C) Potential risks associated with taking the
- 8 medication to be prescribed;
- 9 (D) Probable result of taking the medication to be
- 10 prescribed;
- 11 (E) Possibility that the individual may choose not to
- 12 obtain the medication or may obtain the
- 13 medication but may decide not to use it; and
- 14 (F) Feasible alternatives or additional treatment
- 15 opportunities, including but not limited to
- 16 comfort care, hospice care, and pain control;
- 17 (4) Refer the patient to a consulting provider for medical
- 18 confirmation of the diagnosis, and for a determination
- 19 that the patient is capable and acting voluntarily;
- 20 (5) Refer the patient for counseling;
- 21 (6) Recommend that the patient notify next of kin;



- 1 (7) Counsel the patient about the importance of having
2 another person present when the qualified patient
3 self-administers the prescription prescribed pursuant
4 to this chapter and of not self-administering the
5 prescription in a public place;
- 6 (8) Inform the patient that a qualified patient may
7 rescind the request at any time and in any manner, and
8 offer the qualified patient an opportunity to rescind
9 the request at the time of the qualified patient's
10 second oral request made pursuant to section 327L-9;
- 11 (9) Verify, immediately [~~prior to~~] before writing the
12 prescription for medication under this chapter, that
13 the qualified patient is making an informed decision;
- 14 (10) Fulfill the medical record documentation requirements
15 of section 327L-12;
- 16 (11) Ensure that all appropriate steps are carried out in
17 accordance with this chapter [~~prior to~~] before writing
18 a prescription for medication to enable a qualified
19 patient to end the qualified patient's life pursuant
20 to this chapter; and
- 21 (12) Either:



1 (A) Dispense medications directly, including
2 ancillary medications intended to facilitate the
3 desired effect to minimize the patient's
4 discomfort; provided that the attending provider
5 is authorized to dispense controlled substances
6 pursuant to chapter 329, has a current Drug
7 Enforcement Administration certificate, and
8 complies with any applicable administrative
9 rules; or

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

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



1 " ~~[f]~~ §327L-9 ~~[f]~~ **Written and oral requests.** To receive a
2 prescription for medication that a qualified patient may self-
3 administer to end the qualified patient's life pursuant to this
4 chapter, a qualified patient shall have made an oral request and
5 a written request, and reiterate the oral request to the
6 qualified patient's attending provider not less than ~~[twenty]~~
7 fifteen days after making the initial oral request. At the time
8 the qualified patient makes the second oral request, the
9 attending provider shall offer the qualified patient an
10 opportunity to rescind the request."

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

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

18 (b) Not less than forty-eight hours shall elapse between
19 the qualified patient's written request and the taking of steps
20 to make available a prescription pursuant to section
21 327L-4(a)(12).



1 (c) If the qualified patient's attending provider attests
2 that the qualified patient will, within a reasonable medical
3 judgment, die within fifteen days after making the initial oral
4 request, the fifteen day waiting period shall be waived and the
5 qualified patient may reiterate the oral request to the
6 attending provider at any time after making the initial oral
7 request."

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

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



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

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

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

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

- 16 (1) Making an initial determination that a patient has a
17 terminal disease and informing the patient of the
18 medical prognosis;
- 19 (2) Providing information about this chapter to a patient
20 upon the request of the patient;



- 1 (3) Providing a patient, upon the request of the patient,
- 2 with a referral to another [~~physician,~~] provider; or
- 3 (4) Entering into a contract with a patient as the
- 4 patient's attending provider, consulting provider, or
- 5 counselor to act outside of the course and scope of
- 6 the health care provider's capacity as an employee or
- 7 independent contractor of a health care facility."

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

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

16 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 an attending provider to make an initial determination in person or via telehealth. 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. (SD2)

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

