

JAN 22 2021

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# 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 Authorizing increased participation by advanced practice  
2 registered nurses in certain circumstances will further enable  
3 improved access to health care services, expedite the processing  
4 of paperwork, and provide optimal care at the initial point of  
5 access for Hawaii patients, especially in rural and medically  
6 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 certify whether a person is totally disabled under the  
11 income tax code;
- 12 (2) Authorizing advanced practice registered nurses to  
13 make capacity determinations for purposes of advance  
14 mental health care directives; and
- 15 (3) Adds advanced practice registered nurses as primary  
16 providers in advance mental health care directives.

17 SECTION 2. Section 235-1, Hawaii Revised Statutes, is  
18 amended by amending the definition of "person totally disabled"  
19 to read as follows:

20 ""Person totally disabled" means a person who is totally  
21 and permanently disabled, either physically or mentally, which



1 results in the person's inability to engage in any substantial  
2 gainful business or occupation.

3 The disability shall be certified to by a:

4 (1) Physician or osteopathic physician licensed under  
5 chapter 453[+] or an advanced practice registered  
6 nurse licensed under chapter 457;

7 (2) Qualified out-of-state physician or advanced practice  
8 registered nurse who is currently licensed to practice  
9 in the state in which the physician or advanced  
10 practice registered nurse resides; or

11 (3) Commissioned medical officer in the United States  
12 Army, Navy, Marine Corps, or Public Health Service,  
13 engaged in the discharge of the officer's official  
14 duty.

15 Certification shall be on forms prescribed by the department of  
16 taxation."

17 SECTION 3. Section 327G-2, Hawaii Revised Statutes, is  
18 amended as follows:

19 1. By adding a new definition to be appropriately inserted  
20 and to read:



1           "Advanced practice registered nurse" means a person  
2 licensed as an advanced practice registered nurse pursuant to  
3 chapter 457."

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

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

14           3. By amending the definition of "supervising health care  
15 provider" to read:

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



1 SECTION 4. Section 327G-7, Hawaii Revised Statutes, is  
2 amended by amending subsections (d) and (e) to read as follows:  
3 "(d) For the purposes of this chapter, the determination  
4 that a principal lacks capacity shall be made by the supervising  
5 health care provider who is a physician or advanced practice  
6 registered nurse and one other physician, advanced practice  
7 registered nurse, or licensed psychologist after both have  
8 conducted an examination of the principal. Upon examination and  
9 a joint determination that the principal lacks capacity, the  
10 supervising health care provider shall promptly note the  
11 determination in the principal's medical record, including the  
12 facts and professional opinions that form the basis of the  
13 determination, and shall promptly notify the agent that the  
14 principal lacks capacity and that the advance mental health care  
15 directive has been invoked.

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



1 shall promptly notify the agent that the principal has recovered  
2 capacity."

3 SECTION 5. Section 327G-10, Hawaii Revised Statutes, is  
4 amended by amending subsection (e) to read as follows:

5 "(e) A physician [~~or~~], licensed psychologist, or advanced  
6 practice registered nurse, who in good faith determines that the  
7 principal has or lacks capacity in accordance with this chapter  
8 to decide whether to invoke an advance mental health care  
9 directive, is not subject to criminal prosecution, civil  
10 liability, or professional disciplinary action for making and  
11 acting upon that determination."

12 SECTION 6. Section 327G-14, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§327G-14 **Optional form.** The following sample form may be  
15 used to create an advance mental health care directive. This  
16 sample form may be duplicated, or modified to suit the needs of  
17 the person. Any written document that contains the substance of  
18 the following information may be used in an advance mental  
19 health care directive:

20

21 "ADVANCE MENTAL HEALTH CARE DIRECTIVE



Explanation

1  
2  
3  
4       You have the right to give instructions about your own  
5 mental health care. You also have the right to name someone  
6 else to make mental health treatment decisions for you. This  
7 form lets you do either or both of these things. It also lets  
8 you express your wishes regarding the designation of your health  
9 care providers. If you use this form, you may complete or  
10 modify all or any part of it. You are free to use a different  
11 form.

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

15       Part 2 of this form is a power of attorney for mental  
16 health care. This lets you name another individual as your  
17 agent to make mental health treatment decisions for you, if you  
18 become incapable of making your own decisions, or if you want  
19 someone else to make those decisions for you now, even though  
20 you are still capable of making your own decisions. You may  
21 name alternate agents to act for you if your first choice is not  
22 willing, able, or reasonably available to make decisions for



1 you. Unless related to you, your agent may not be an owner,  
2 operator, or employee of a health care institution where you are  
3 receiving care.

4 You may allow your agent to make all mental health  
5 treatment decisions for you. However, if you wish to limit the  
6 authority of your agent, you may specify those limitations on  
7 the form. If you do not limit the authority of your agent, your  
8 agent will have the right to:

- 9 (1) Consent or refuse consent to any care, treatment,  
10 service, or procedure to maintain, diagnose, or  
11 otherwise affect a mental condition;
- 12 (2) Select or discharge health care providers and  
13 institutions;
- 14 (3) Approve or disapprove diagnostic tests, surgical  
15 procedures, and programs of medication; and
- 16 (4) Approve or disapprove of electroconvulsive treatment.

17 Part 3 of this form lets you give specific instructions  
18 about any aspect of your mental health care and treatment.  
19 Choices are provided for you to express your wishes regarding  
20 the provision, withholding, or withdrawal of medication and





1 treatment. Space is provided for you to add to the choices you  
2 have made or for you to write out any additional wishes.

3 Part 4 of this form must be completed in order to activate  
4 the advance mental health care directive. After completing this  
5 form, sign and date the form at the end and have the form  
6 witnessed by one or both of the two methods listed below. Give  
7 a copy of the signed and completed form to your physician[7] or  
8 advanced practice registered nurse, to any other health care  
9 providers you may have, to any health care institution at which  
10 you are receiving care, and to any mental health care agents you  
11 have named. You should talk to the persons you have named as  
12 agents to make sure that they understand your wishes and are  
13 willing to take the responsibility.

14 You have the right to revoke this advance mental health  
15 care directive or replace this form at any time, unless  
16 otherwise specified in writing in the advance mental health care  
17 directive.

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



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PART 1  
CHECKLIST OF MENTAL HEALTH CARE OPTIONS

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

- Designation of my mental health care agent(s).
- Authority granted to my agent(s).
- My preference for a court appointed guardian.
- My preference of treating facility and alternatives to hospitalization.
- My preferences about the physicians, advanced practice registered nurses, or other mental health care providers who will treat me if I am hospitalized.
- My preferences regarding medications.
- My preferences regarding electroconvulsive therapy (ECT or shock treatment).
- My preferences regarding emergency interventions (seclusion, restraint, medications).
- Consent for experimental drugs or treatments.



1       \_\_\_ Who should be notified immediately of my admission to  
2       a facility.

3       \_\_\_ Who should be prohibited from visiting me.

4       \_\_\_ My preferences for care and temporary custody of my  
5       children or pets.

6       \_\_\_ Other instructions about mental health care and  
7       treatment.

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PART 2

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DURABLE POWER OF ATTORNEY FOR MENTAL HEALTH

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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:

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18

(name of individual you choose as agent)

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20

\_\_\_\_\_

21

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

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23

\_\_\_\_\_

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(home phone) (work phone)



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1

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

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(name of individual you choose as first alternate agent)

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

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(home phone) (work phone)

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

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22

(name of individual you choose as second alternate agent)

23

24

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25

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



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(home phone) (work phone)

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

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(Add additional sheets if needed.)

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

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



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

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PART 3  
 INSTRUCTIONS FOR MENTAL HEALTH CARE AND TREATMENT

10 If you are satisfied to allow your agent to determine what  
 11 is best for you, you need not fill out this part of the form.  
 12 If you do fill out this part of the form, you may strike any  
 13 wording you do not want.

14 (6) My preference of treating facility and alternatives to  
 15 hospitalization:

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

19 (8) My preferences regarding medications:

20 (9) My preferences regarding electroconvulsive therapy  
 21 (ECT or shock treatment):

22 (10) My preferences regarding emergency interventions  
 23 (seclusion, restraint, medications):

24 (11) Consent for experimental drugs or treatments:

25 (12) Who should be notified immediately of my admission to a  
 26 facility:

27 (13) Who should be prohibited from visiting me:

28 (14) My preferences for care and temporary custody of my  
 29 children or pets:

30 (15) My preferences about revocation of my advance mental  
 31 health care directive during a period of incapacity:

32 (16) OTHER WISHES: (If you do not agree with any of the  
 33 optional choices above and wish to write your own, or if you  
 34 wish to add to the instructions you have given above, you may do  
 35 so here.) I direct that:  
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37 \_\_\_\_\_  
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(Add additional sheets if needed.)

PART 4  
WITNESSES AND SIGNATURES

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

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

\_\_\_\_\_

(date)

(sign your name)

\_\_\_\_\_

(address)

(print your name)

\_\_\_\_\_

(city) (state)

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

AFFIRMATION OF WITNESSES

Witness 1

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the

1 principal appears to be of sound mind and under no duress,  
 2 fraud, or undue influence, that I am not the person appointed as  
 3 agent by this document, and that I am not a health care  
 4 provider, nor an employee of a health care provider or facility.  
 5 I am not related to the principal by blood, marriage, or  
 6 adoption, and to the best of my knowledge, I am not entitled to  
 7 any part of the estate of the principal upon the death of the  
 8 principal under a will now existing or by operation of law.

9  
 10 \_\_\_\_\_

11 (date) (sign your name)

12  
 13 \_\_\_\_\_

14 (address) (print your name)

15  
 16 \_\_\_\_\_

17 (city) (state)

18  
 19 Witness 2

20

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

33  
 34 \_\_\_\_\_

35 (date) (sign your name)

36  
 37 \_\_\_\_\_





1 (address) (print your name)  
2  
3 \_\_\_\_\_

4 (city) (state)  
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6 DECLARATION OF NOTARY  
7

8 State of Hawaii  
9 County of \_\_\_\_\_  
10 On this \_\_\_\_\_ day of \_\_\_\_\_, in the year  
11 \_\_\_\_\_, before me, \_\_\_\_\_ (insert name of notary  
12 public) appeared \_\_\_\_\_, personally known to me (or  
13 proved to me on the basis of satisfactory evidence) to be the  
14 person whose name is subscribed to this instrument, and  
15 acknowledged that he or she executed it.  
16

17 Notary Seal

18  
19 \_\_\_\_\_  
20 (Signature of Notary Public)"

21 SECTION 7. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

23 SECTION 8 This Act shall take effect upon its approval.  
24

INTRODUCED BY: Rosalyn H. Baker



# S.B. NO. 620

**Report Title:**

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

**Description:**

Authorizes advanced practice registered nurses to certify whether a person is totally disabled under the 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.

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

