

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that at least thirty states have considered enacting laws to allow mentally competent adult residents who have a terminal illness to voluntarily request and receive a prescription medication that would allow the person to die in a peaceful, humane, and dignified manner. Of these, five states — Oregon, Washington, California, Vermont, and Colorado — and the District of Columbia have passed legislation to allow this choice.

The legislature further finds that Hawaii patients who are terminally ill and mentally capable currently have access to options which can, in most cases, alleviate their suffering during the dying process. Palliative care, hospice care, VSED (voluntarily stopping eating and drinking), or stopping artificial ventilation or other life-sustaining therapy to allow a comfortable natural death are options currently available to terminally ill persons in Hawaii. However, physicians and other health care providers often do not offer these options to their patients. These options also do not always result in a quick or peaceful death.

The legislature has closely examined this issue a number of times over the past two decades. Following this long period of examination and debate, the legislature believes that it is appropriate to give patients the ability to choose their own medical care at the end of life and at the same time, ensure robust safeguards are in place to prevent any possible abuse. Therefore, the legislature believes that any legislation for patient choice must include all of the following protections for patients:

- (1) Confirmation by two health care providers of the patient's diagnoses, prognosis, and medical decision-making capacity, and the voluntariness of the patient's request;
- (2) Determination by a counselor that the patient is capable, and does not appear to be suffering from undertreatment or nontreatment of depression or other conditions which may interfere with the patient's ability to make an informed decision;
- (3) Two oral requests from the patient, separated by not less than twenty days; one signed written request that is witnessed by two people, one of whom must be unrelated to the patient; and one signed final attestation;
- (4) An additional waiting period between the written request and the writing of the prescription; and
- (5) The creation of strict criminal penalties for any person who:
 - (A) Tamper with a person's request for a prescription pursuant to this Act; or
 - (B) Coerces a person with a terminal illness to request a prescription.

In addition, the patient at all times shall retain the right to rescind the request for medication and be under no obligation to fill the prescription or use the medication.

These rigorous safeguards will be the strongest of any state in the nation and will protect patients and their loved ones from any potential abuse.

The legislature concludes that adult, terminally ill residents of the State can determine their own medical treatment as they near the end of life and should have a full complement of support services available, including palliative care, hospice care, aggressive medical care, and the right to choose to avoid

an unnecessarily prolonged life of pain and suffering. The choice elected by an individual must be fully informed, including about options for care that are presented and discussed with health care providers in a values-neutral manner.

The purpose of this Act is to allow qualified patients in this State with a medically confirmed terminal illness with less than six months to live and possessing decisional capacity to determine their own medical care at the end of their lives.

SECTION 2. This Act shall be known and may be cited as the “Our Care, Our Choice Act”.

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER OUR CARE, OUR CHOICE ACT

§ -1 Definitions. As used in this chapter:

“Adult” means an individual who is eighteen years of age or older.

“Attending provider” means a physician licensed pursuant to chapter 453 who has responsibility for the care of the patient and treatment of the patient’s terminal disease.

“Capable” means that in the opinion of the patient’s attending provider or consulting provider, psychiatrist, psychologist, or clinical social worker, a patient has the ability to understand the patient’s choices for care, including risks and benefits, and make and communicate health care decisions to health care providers.

“Consulting provider” means a physician licensed pursuant to chapter 453 who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s disease.

“Counseling” means one or more consultations, which may be provided through telehealth, as necessary between a psychiatrist licensed under chapter 453, psychologist licensed under chapter 465, or clinical social worker licensed pursuant to chapter 467E and a patient for the purpose of determining that the patient is capable, and that the patient does not appear to be suffering from undertreatment or nontreatment of depression or other conditions which may interfere with the patient’s ability to make an informed decision pursuant to this chapter.

“Department” means the department of health.

“Health care facility” shall have the same meaning as in section 323D-2.

“Health care provider” means a person licensed, certified, or otherwise authorized or permitted by the law of this State to administer health care or dispense medication in the ordinary course of business or practice of a profession.

“Informed decision” means a decision by a qualified patient to request and obtain a prescription to end the qualified patient’s life pursuant to this chapter. The informed decision shall be based on an appreciation of the relevant facts and made after being fully informed by the attending provider of:

- (1) The medical diagnosis;
- (2) The prognosis;
- (3) The potential risks associated with taking the medication to be prescribed;
- (4) The probable result of taking the medication to be prescribed;

- (5) The possibility that the individual may choose not to obtain the medication or may obtain the medication and may decide not to use it; and
- (6) The feasible alternatives or additional treatment opportunities, including but not limited to comfort care, hospice care, and pain control.

“Medically confirmed” means the medical opinion of the attending provider has been confirmed by a consulting provider who has examined the patient and the patient’s relevant medical records.

“Patient” means a person who is under the care of an attending provider.

“Physician” means a doctor of medicine or osteopathy licensed to practice medicine pursuant to chapter 453 by the Hawaii medical board.

“Prescription” means prescription medication or medications that the qualified patient may self-administer to end the qualified patient’s life pursuant to this chapter.

“Qualified patient” means a capable adult who is a resident of the State and has satisfied the requirements of this chapter in order to obtain a prescription to end the qualified patient’s life pursuant to this chapter.

“Self-administer” means an individual performing an affirmative, conscious, voluntary act to take into the individual’s body prescription medication to end the individual’s life pursuant to this chapter.

“Telehealth” shall have the same meaning as defined in section 453-1.3.

“Terminal disease” means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

“Terminal disease” does not include age or any physical disability or condition that is not likely to, by itself, cause death within six months.

§ -2 Oral and written requests for medication; initiated. An adult who is capable, is a resident of the State, and has been determined by an attending provider and consulting provider to be suffering from a terminal disease, and who has voluntarily expressed the adult’s wish to die, may, pursuant to section -9, submit:

- (1) Two oral requests, a minimum of twenty days apart; and
- (2) One written request,

for a prescription that may be self-administered for the purpose of ending the adult’s life in accordance with this chapter. The attending provider shall directly, and not through a designee, receive all three requests required pursuant to this section.

§ -3 Form of the written request. (a) A valid written request for a prescription under this chapter shall be substantially in the form described in section -23, and shall be signed and dated by the qualified patient and witnessed by at least two individuals who, in the presence of the qualified patient, attest that to the best of their knowledge and belief the qualified patient is of sound mind, acting voluntarily, and is not being coerced to sign the request.

- (b) One of the witnesses shall be a person who is not:
 - (1) A relative of the qualified patient by blood, marriage, or adoption;
 - (2) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will, trust, or other legal instrument, or by operation of law; or
 - (3) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(c) The qualified patient's attending provider at the time the request is signed shall not be a witness.

§ -4 Attending provider; duties. (a) The attending provider shall:

- (1) Make the initial determination of whether a patient has a terminal disease, is capable of medical decision-making, and has made the request for the prescription voluntarily;
- (2) Require that the patient demonstrate residency pursuant to section -13;
- (3) To ensure that the patient is making an informed decision, inform the patient of the:
 - (A) Patient's medical diagnosis;
 - (B) Patient's prognosis;
 - (C) Potential risks associated with taking the medication to be prescribed;
 - (D) Probable result of taking the medication to be prescribed;
 - (E) Possibility that the individual may choose not to obtain the medication or may obtain the medication but may decide not to use it; and
 - (F) Feasible alternatives or additional treatment opportunities, including but not limited to comfort care, hospice care, and pain control;
- (4) Refer the patient to a consulting provider for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;
- (5) Refer the patient for counseling;
- (6) Recommend that the patient notify next of kin;
- (7) Counsel the patient about the importance of having another person present when the qualified patient self-administers the prescription prescribed pursuant to this chapter and of not self-administering the prescription in a public place;
- (8) Inform the patient that a qualified patient may rescind the request at any time and in any manner, and offer the qualified patient an opportunity to rescind the request at the time of the qualified patient's second oral request made pursuant to section -9;
- (9) Verify, immediately prior to writing the prescription for medication under this chapter, that the qualified patient is making an informed decision;
- (10) Fulfill the medical record documentation requirements of section -12;
- (11) Ensure that all appropriate steps are carried out in accordance with this chapter prior to writing a prescription for medication to enable a qualified patient to end the qualified patient's life pursuant to this chapter; and
- (12) Either:
 - (A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort; provided that the attending provider is authorized to dispense controlled substances pursuant to chapter 329, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rules; or
 - (B) With the qualified patient's written consent:
 - (i) Contact a pharmacist of the qualified patient's choice and inform the pharmacist of the prescription; and

- (ii) Transmit the written prescription personally, by mail, or electronically to the pharmacist, who shall dispense the medication to either the qualified patient, the attending provider, or an expressly identified agent of the qualified patient.

(b) Notwithstanding any other provision of law, an attending provider may sign the qualified patient's death certificate. The death certificate shall list the terminal disease as the immediate cause of death.

§ -5 Consulting provider; confirmation. Before a patient is qualified under this chapter, a consulting provider shall examine the patient and the patient's relevant medical records and confirm, in writing, the attending provider's diagnosis that the patient is suffering from a terminal disease and the attending provider's prognosis, and verify that the patient is capable, is acting voluntarily, and has made an informed decision.

§ -6 Counseling referral. The attending provider shall refer the patient for counseling. No medication to end a patient's life pursuant to this chapter shall be prescribed until the person performing the counseling determines that the patient is capable, and does not appear to be suffering from undertreatment or nontreatment of depression or other conditions which may interfere with the patient's ability to make an informed decision pursuant to this chapter.

§ -7 Informed decision. No qualified patient shall receive a prescription for medication to end the qualified patient's life pursuant to this chapter unless the qualified patient has made an informed decision. Immediately prior to writing a prescription under this chapter, the attending provider shall verify that the qualified patient is making an informed decision.

§ -8 Family notification. The attending provider shall recommend that the qualified patient notify the qualified patient's next of kin of the request for a prescription pursuant to this chapter. A qualified patient who declines or is unable to notify next of kin shall not have the qualified patient's request denied solely for that reason.

§ -9 Written and oral requests. To receive a prescription for medication that a qualified patient may self-administer to end the qualified patient's life pursuant to this chapter, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to the qualified patient's attending provider not less than twenty days after making the initial oral request. At the time the qualified patient makes the second oral request, the attending provider shall offer the qualified patient an opportunity to rescind the request.

§ -10 Right to rescind request. A qualified patient may rescind the request at any time and in any manner without regard to the qualified patient's mental state. No prescription under this chapter shall be made available pursuant to section -4(a)(12) if the attending provider has not offered the qualified patient an opportunity to rescind the request at the time of the second oral request made pursuant to section -9.

§ -11 Waiting periods. Not less than twenty days shall elapse between the qualified patient's initial oral request and the taking of steps to make available a prescription pursuant to section -4(a)(12). Not less than forty-eight

hours shall elapse between the qualified patient's written request and the taking of steps to make available a prescription pursuant to section -4(a)(12).

§ -12 Medical record; documentation requirements. The following shall be documented or filed in a qualified patient's medical record:

- (1) All oral requests by the qualified patient for a prescription to end the qualified patient's life pursuant to this chapter;
- (2) All written requests by the qualified patient for a prescription to end the qualified patient's life pursuant to this chapter;
- (3) The attending provider's diagnosis and prognosis and determination that the qualified patient is capable, acting voluntarily, and has made an informed decision;
- (4) The consulting provider's diagnosis and prognosis and verification that the qualified patient is capable, acting voluntarily, and has made an informed decision;
- (5) The counselor's statement of determination that the patient is capable, and does not appear to be suffering from undertreatment or nontreatment of depression or other conditions which may interfere with the patient's ability to make an informed decision pursuant to this chapter;
- (6) The attending provider's offer to the qualified patient to rescind the patient's request at the time of the qualified patient's second oral request made pursuant to section -9; and
- (7) A statement by the attending provider indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including identification of the medication prescribed.

§ -13 Residency requirement. Only requests made by residents of this State shall be granted under this chapter. Factors demonstrating state residency include but are not limited to:

- (1) Possession of a Hawaii driver's license or civil identification card;
- (2) Registration to vote in Hawaii;
- (3) Evidence that the patient owns or leases property in Hawaii; or
- (4) Filing of a Hawaii tax return for the most recent tax year.

§ -14 Reporting requirements. (a) Within thirty calendar days of writing a prescription, the attending provider shall submit a copy of the qualified patient's written request, as well as copy of all the documentation required pursuant to section -12 to the department.

(b) Within thirty calendar days following notification of the qualified patient's death from use of a prescribed medication pursuant to this chapter, or any other cause, the attending provider shall submit any follow-up information to the documentation required pursuant to section -12 to the department.

(c) The department shall annually collect and review all information submitted pursuant to this chapter. The information collected shall be confidential and shall be collected in such a manner that protects the privacy of all qualified patients, the qualified patients' family, and any attending provider, consulting provider, or counselor involved with a qualified patient pursuant to this chapter. Information collected pursuant to this section by the department shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(d) On or before July 1, 2019, and each year thereafter, the department shall create a report of information collected under subsection (c) and vital sta-

tistics records maintained by the department and shall post the report on the department's website. Information contained in the report shall only include:

- (1) The number of qualified patients for whom a prescription was written pursuant to this chapter;
- (2) The number of known qualified patients who died each year for whom a prescription was written pursuant to this chapter and the cause of death of those qualified patients;
- (3) The total number of prescriptions written pursuant to this chapter for the year in which the report was created as well as cumulatively for all years beginning with 2019;
- (4) The total number of qualified patients who died while enrolled in hospice or other similar palliative care program;
- (5) The number of known deaths in Hawaii from a prescription written pursuant to this chapter per five-thousand deaths in Hawaii;
- (6) The number of attending providers who wrote prescriptions pursuant to this chapter;
- (7) Of the people who died as a result of self-administering a prescription pursuant to this chapter, the individual's:
 - (A) Age at death;
 - (B) Education level;
 - (C) Race;
 - (D) Sex;
 - (E) Type of insurance, if any; and
 - (F) Underlying illness; and
- (8) Any other data deemed appropriate by the department.

§ -15 Disposal of unused medication. A person who has custody or control of any unused medication dispensed under this chapter after the death of a qualified patient shall personally deliver the unused medication for disposal to the nearest qualified facility that properly disposes of controlled substances, or if none is available, shall dispose of it by lawful means.

§ -16 Effect on construction of wills or contracts. (a) No provision in any will or contract, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for a prescription to end the person's life pursuant to this chapter, shall be valid.

(b) No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by a person, for a prescription to end the person's life pursuant to this chapter.

§ -17 Insurance or annuity policies. The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any such policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for a prescription to end the person's life pursuant to this chapter. A qualified patient's act of using medication to end the qualified patient's life pursuant to this chapter shall have no effect upon a life, health, or accident insurance or annuity policy.

§ -18 Construction of chapter. (a) Nothing in this chapter shall be construed to authorize a health care provider, health care facility, or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, murder, manslaughter, negligent homicide, or any other criminal conduct under the law.

(b) Nothing in this chapter shall be construed to allow a lower standard of care for qualified patients in the community where the qualified patient is treated or in a similar community.

§ -19 Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions. (a) Except as provided in section -20 and subsection (c):

- (1) No person shall be subject to civil or criminal liability or professional disciplinary action for participating or acting in good faith compliance with this chapter, including being present when a qualified patient self-administers the prescribed medication to end the qualified patient's life pursuant to this chapter;
- (2) No professional organization or association, health care provider, or health care facility shall subject any person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this chapter;
- (3) No request by a qualified patient for a prescription or provision by a health care provider of a prescription or medication in good faith compliance with this chapter shall constitute neglect, harm, self-neglect, or abuse for any purpose of law or provide the sole basis for the appointment of a guardian or conservator;
- (4) No health care provider or health care facility shall be under any duty, whether by contract, statute, or any other legal requirement, to participate in the provision to a qualified patient of a prescription or of medication to end the qualified patient's life pursuant to this chapter. If a health care provider is unable or unwilling to carry out a patient's request under this chapter and the patient transfers the patient's care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider; and
- (5) No health care facility shall be subject to civil or criminal liability for acting in good faith compliance with this chapter.

(b) Notwithstanding any other provision of law, a health care facility may prohibit a health care provider from participating in actions covered by this chapter on the premises of the health care facility if the health care facility has notified the health care provider of the health care facility's policy regarding participation in actions covered by this chapter. Nothing in this subsection shall prevent a health care provider from providing health care services to a patient that do not constitute participation in actions covered by this chapter.

(c) Subsection (a) notwithstanding, if the health care facility has notified the health care provider prior to participation in actions covered by this chapter that the health care facility prohibits participation on its premises in actions covered by this chapter, the health care facility may subject the health care provider to the following sanctions:

- (1) Loss of privileges, loss of membership, or other sanction provided pursuant to the medical staff bylaws, policies, and procedures of the health care facility if the health care provider is a member of the health care facility's medical staff and participates in actions covered by this chapter while on the premises of the health care facility other than in the private medical office of the health care provider;
- (2) Termination of lease or other property contract or other nonmonetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider

panel, if the health care provider participates in actions covered by this chapter while on the premises of the health care facility or on property that is owned by or under the direct control of the health care facility; or

- (3) Termination of contract or other nonmonetary remedies provided by contract if the health care provider participates in actions covered by this chapter while acting in the course and scope of the health care provider's capacity as an employee or independent contractor of the health care facility; provided that nothing in this paragraph shall be construed to prevent:

- (A) A health care provider from participating in actions covered by this chapter while acting outside the course and scope of the health care provider's capacity as an employee or independent contractor; or

- (B) A patient from contracting with the patient's attending provider, consulting provider, or counselor to act outside the course and scope of those providers' capacity as an employee or independent contractor of the health care facility.

- (d) A health care facility that imposes sanctions pursuant to subsection (c) shall follow all due process and other procedures the health care facility may have that are related to the imposition of sanctions on a health care provider.

- (e) For the purposes of this section:

"Notify" means to deliver a separate statement in writing to a health care provider specifically informing the health care provider prior to the health care provider's participation in actions covered by this chapter of the health care facility's policy regarding participation in actions covered by this chapter.

"Participate in actions covered by this chapter" means to perform the duties of an attending provider pursuant to section -4, the consulting provider function pursuant to section -5, or the counseling referral function or counseling pursuant to section -6. The term does not include:

- (1) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;
- (2) Providing information about this chapter to a patient upon the request of the patient;
- (3) Providing a patient, upon the request of the patient, with a referral to another physician; or
- (4) Entering into a contract with a patient as the patient's attending provider, consulting provider, or counselor to act outside of the course and scope of the health care provider's capacity as an employee or independent contractor of a health care facility.

- (f) Action taken pursuant to sections -4 through -6 shall not be the sole basis for disciplinary action under sections 453-8, 465-13, or 467E-12.

§ -20 Prohibited acts; penalties. (a) Any person who intentionally makes, completes, alters, or endorses a request for a prescription made pursuant to section -2, for another person, or conceals or destroys any documentation of a rescission of a request for a prescription completed by another person, shall be guilty of a class A felony.

(b) Any person who knowingly coerces or induces a patient by force, threat, fraud, or intimidation to request a prescription pursuant to section -2, shall be guilty of a class A felony.

(c) Nothing in this section shall limit any liability for civil damages resulting from any intentional or negligent conduct by any person in violation of this chapter.

(d) The penalties in this chapter are cumulative and shall not preclude criminal penalties pursuant to other applicable state law.

§ -21 **Claims by governmental entity for costs incurred.** Any governmental entity that incurs costs resulting from a person terminating the person's life pursuant to this chapter in a public place shall have a claim against the estate of the person to recover costs and reasonable attorneys' fees related to enforcing the claim.

§ -22 **Severability.** Any provision of this chapter that is held invalid as to any person or circumstance shall not affect the application of any other provision of this chapter that can be given full effect without the invalid provision or application.

§ -23 **Form of the request.** A request for a prescription as authorized by this chapter shall be in substantially the following form:

"REQUEST FOR MEDICATION TO END MY LIFE

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending provider has determined is a terminal disease and that has been medically confirmed by a consulting provider.

I have received counseling to determine that I am capable and not suffering from undertreatment or nontreatment of depression or other conditions which may interfere with my ability to make an informed decision.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, the possibility that I may choose not to obtain or not to use the medication, and the feasible alternatives or additional treatments, including comfort care, hospice care, and pain control.

I request that my attending provider prescribe medication that I may self-administer to end my life.

INITIAL ONE:

_____ I have informed my family of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family of my decision.

_____ I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my attending provider has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request:

- (a) Is personally known to us or has provided proof of identity;
- (b) Signed this request in our presence;
- (c) Appears to be of sound mind and not under duress or to have been induced by fraud, or subjected to undue influence when signing the request; and

(d) Is not a patient for whom either of us is the attending provider.

 _____ Witness Date _____
 _____ Witness Date _____

NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death and shall not own, operate, or be employed at a health care facility where the person is a patient or resident."

§ -24 Form of final attestation. (a) A final attestation form shall be given to a qualified patient at the time an attending provider writes or dispenses the prescription authorized by this chapter and shall be in substantially the following form:

"FINAL ATTESTATION FOR A REQUEST FOR MEDICATION TO END MY LIFE

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending provider has determined is a terminal disease and that has been medically confirmed by a consulting provider.

I have received counseling to determine that I am capable and not suffering from undertreatment or nontreatment of depression or other conditions which may interfere with my ability to make an informed decision.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, the possibility that I may choose not to obtain or not to use the medication, and the feasible alternatives or additional treatment options, including comfort care, hospice care, and pain control.

I understand that I am requesting that my attending provider prescribe medication that I may self-administer to end my life.

INITIAL ONE:

_____ I have informed my family of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family of my decision.

_____ I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand that I still may choose not to use the medication prescribed and by signing this form I am under no obligation to use the medication prescribed.

I am fully aware that the prescribed medication will end my life and while I expect to die when I take the medication prescribed, I also understand that my death may not be immediate and my attending provider has counseled me about this possibility.

I make this request voluntarily and without reservation.

Signed: _____

Dated: _____"

(b) The final attestation form shall be completed by the qualified patient within forty-eight hours prior to the qualified patient self-administration of the medication prescribed pursuant to this chapter. Upon the qualified patient's death, the completed final attestation form shall be delivered by the qualified patient's health care provider, family member, or other representative to the attending provider for inclusion in the qualified patient's medical record.

§ -25 **Annual report.** The department shall submit to the legislature an annual report no later than twenty days prior to the convening of each regular session. The report shall include but not be limited to:

- (1) An annual analysis of the implementation of this chapter, including any implementation problems; and
- (2) Any proposed legislation.”

SECTION 4. Section 327E-13, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This chapter shall not authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this State[-]; provided that this subsection shall not apply to actions taken under chapter _____.”

SECTION 5. Section 327H-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in this section shall be construed to:

- (1) Expand the authorized scope of practice of any licensed physician;
- (2) Limit any reporting or disciplinary provisions applicable to licensed physicians and surgeons who violate prescribing practices; and
- (3) Prohibit the discipline or prosecution of a licensed physician for:
 - (A) Failing to maintain complete, accurate, and current records that document the physical examination and medical history of a patient, the basis for the clinical diagnosis of a patient, and the treatment plan for a patient;
 - (B) Writing false or fictitious prescriptions for controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 United States Code 801 et seq. or in chapter 329;
 - (C) Prescribing, administering, or dispensing pharmaceuticals in violation of the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 United States Code 801 et seq. or of chapter 329;
 - (D) Diverting medications prescribed for a patient to the licensed physician’s own personal use; and
 - (E) Causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual; provided that [it]:
 - (i) It is not “causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual” to prescribe, dispense, or administer medical treatment for the purpose of treating severe acute pain or severe chronic pain, even if the medical treatment may increase the risk of death, so long as the medical treatment is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason[-]; and
 - (ii) This subparagraph shall not apply to actions taken under chapter _____.”

SECTION 6. Section 707-701.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person[-]; provided that this section shall not apply to actions taken under chapter _____.”

ACT 2

SECTION 7. Section 707-702, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of manslaughter if:

(a) The person recklessly causes the death of another person; or

(b) The person intentionally causes another person to commit suicide[-];
provided that this section shall not apply to actions taken under chapter _____.”

SECTION 8. The department of health shall form an advisory group consisting of a designee of the department and no fewer than five other members, which shall include, at least, one palliative care specialist, hospice care specialist, medical educator, and a non-medical member of the community. The advisory group shall provide advice to the department to facilitate the implementation of chapter _____, Hawaii Revised Statutes, including:

- (1) The data set to be collected and tracked by the department;
- (2) The preparation of appropriate forms and checklists for use by attending providers, consulting providers, and counselors; and
- (3) Otherwise assisting the department with the implementation of chapter _____, Hawaii Revised Statutes.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on January 1, 2019; provided that section 8 shall take effect upon approval.

(Approved April 5, 2018.)