

JAN 22 2021

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# A BILL FOR AN ACT

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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 to voluntarily  
6 request and receive prescription medication that allows the  
7 person to die in a peaceful, humane, and dignified manner.

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



1 healthcare facility and providers, a high percentage of  
2 terminally ill individuals die while waiting to complete the  
3 regulatory requirements to qualify for medication under the  
4 respective state laws. Hawaii has the longest mandatory waiting  
5 period amongst all ten medical-aid-in-dying authorized states  
6 and the District of Columbia. Many patients are not surviving  
7 the mandatory twenty days.

8 The purpose of this Act is to amend the Our Care, Our  
9 Choice Act to:

10 (1) Authorize advanced practice registered nurses, in  
11 addition to physicians, to practice medical aid in  
12 dying in accordance with their scope of practice and  
13 prescribing authority;

14 (2) Authorize psychiatric mental health nurse  
15 practitioners, in addition to psychiatrists,  
16 psychologists, and clinical social workers, to provide  
17 counseling to a qualified patient;

18 (3) Reduce the mandatory waiting period between oral  
19 requests from twenty days to fifteen days; and



(4) Provide an expedited pathway for those terminally ill individuals not expected to survive the mandatory waiting period.

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

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

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

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

"Attending provider" means a physician licensed pursuant to chapter 453 or an advanced practice registered nurse licensed pursuant to chapter 457 who has responsibility for the care of the patient and treatment of the patient's terminal disease."



1           3. By amending the definition of "consulting provider" to  
2 read:

3           "Consulting provider" means a physician licensed pursuant  
4 to chapter 453 who is qualified by specialty or experience to  
5 make a professional diagnosis and prognosis regarding the  
6 patient's disease[-], or an advanced practice registered nurse  
7 licensed pursuant to chapter 457, who is qualified by specialty  
8 or experience to diagnose and prescribe medication."

9           4. By amending the definition of "counseling" to read:

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

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



1           " [4] §327L-2 [4]   Oral and written requests for medication;  
2   initiated. An adult who is capable, is a resident of the State,  
3   and has been determined by an attending provider and consulting  
4   provider to be suffering from a terminal disease, and who has  
5   voluntarily expressed the adult's wish to die, may, pursuant to  
6   section 327L-9, submit:

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

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

14           SECTION 4. Section 327L-9, Hawaii Revised Statutes, is  
15   amended to read as follows:

16           " [4] §327L-9 [4]   Written and oral requests. To receive a  
17   prescription for medication that a qualified patient may self-  
18   administer to end the qualified patient's life pursuant to this  
19   chapter, a qualified patient shall have made an oral request and  
20   a written request, and reiterate the oral request to the  
21   qualified patient's attending provider not less than [~~twenty~~]



1 fifteen days after making the initial oral request. At the time  
2 the qualified patient makes the second oral request, the  
3 attending provider shall offer the qualified patient an  
4 opportunity to rescind the request."

5 SECTION 5. Section 327L-11, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[~~4~~]§327L-11[~~4~~] **Waiting periods.** (a) Not less than  
8 [~~twenty~~] fifteen days shall elapse between the qualified  
9 patient's initial oral request and the taking of steps to make  
10 available a prescription pursuant to section 327L-4(a)(12).

11 (b) Not less than forty-eight hours shall elapse between  
12 the qualified patient's written request and the taking of steps  
13 to make available a prescription pursuant to section  
14 327L-4(a)(12).

15 (c) If the terminally ill individual's attending provider  
16 attests that the individual will, within a reasonable medical  
17 judgment, die within fifteen days after making the initial oral  
18 request, the fifteen day waiting period shall be waived and the  
19 terminally ill individual may reiterate the oral request to the  
20 attending provider at any time after making the initial oral  
21 request."



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

"(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 327L-4, the consulting provider function pursuant to section 327L-5, or the counseling referral function or counseling pursuant to section 327L-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,~~ provider; 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."

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. 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 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

INTRODUCED BY:

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**Report Title:**

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

**Description:**

Authorizes advanced practice registered nurses, in addition to physicians, to practice medical aid in dying in accordance with their scope of practice and prescribing authority. Authorizes psychiatric mental health nurse practitioners, in addition to psychiatrists, psychologists, and clinical social workers, to provide counseling to a qualified patient. Reduces the mandatory waiting period between oral requests from twenty days to fifteen days. Waives the mandatory waiting period for those terminally ill individuals not expected to survive the mandatory waiting period.

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