

JAN 20 2023

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 to voluntarily
6 request and receive prescription medication that allows the
7 person to die in a peaceful, humane, and dignified manner. Ten
8 states and the District of Columbia allow this choice.

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; however, they do not
15 have authority to administer medical aid in dying, thereby
16 further limiting access to care for many individuals.
17 Furthermore, evidence from other medical-aid-in-dying authorized



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

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

- 11 (1) Authorize advanced practice registered nurses, in
12 addition to physicians, to practice medical aid in
13 dying in accordance with their scope of practice and
14 prescribing authority;
- 15 (2) Authorize psychiatric mental health nurse
16 practitioners, in addition to psychiatrists,
17 psychologists, and clinical social workers, to provide
18 counseling to a qualified patient;
- 19 (3) Reduce the mandatory waiting period between oral
20 requests from twenty days to five days; and



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

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

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

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

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

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



1 3. By amending the definitions of "consulting provider"
2 and "counseling" to 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 advanced practice registered nurse
7 licensed pursuant to chapter 457, who is qualified by specialty
8 or experience to diagnose and prescribe medication.

9 "Counseling" means one or more consultations, which may be
10 provided through telehealth, as necessary between a psychiatrist
11 licensed under chapter 453, psychologist licensed under chapter
12 465, [œ] clinical social worker licensed pursuant to chapter
13 467E, or advanced practice registered nurse with a psychiatric
14 or clinical nurse specialization licensed under chapter 457, and
15 a 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~~] that may interfere with the patient's ability
19 to 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 "~~[§]~~327L-2~~[§]~~ Oral and written requests for medication;
2 initiated. ~~[An]~~ Except as otherwise provided in section 327L-
3 11(c), an adult who is capable, is a resident of the State, and
4 has been determined by an attending provider and consulting
5 provider to be suffering from a terminal disease, and who has
6 voluntarily expressed the adult's wish to die, may, pursuant to
7 section 327L-9, submit:

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

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

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

17 "~~[§]~~327L-9~~[§]~~ **Written and oral requests.** ~~[To]~~ Except as
18 otherwise provided in section 327L-11(c), to receive a
19 prescription for medication that a qualified patient may self-
20 administer to end the qualified patient's life pursuant to this
21 chapter, a qualified patient shall have made an oral request and



1 a written request, and reiterate the oral request to the
2 qualified patient's attending provider not less than [~~twenty~~
3 five days after making the initial oral request. At the time
4 the qualified patient makes the second oral request, the
5 attending provider shall offer the qualified patient an
6 opportunity to rescind the request."

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

9 "~~[§]§327L-11[§]~~ **Waiting periods.** [~~Not~~] (a) Except as
10 otherwise provided in subsection (c), not less than [~~twenty~~
11 five days shall elapse between the qualified patient's initial
12 oral request and the taking of steps to make available a
13 prescription pursuant to section 327L-4(a)(12).

14 (b) Not less than forty-eight hours shall elapse between
15 the qualified patient's written request and the taking of steps
16 to make available a prescription pursuant to section 327L-
17 4(a)(12).

18 (c) If the qualified patient's attending provider attests
19 that the qualified patient will, in the provider's reasonable
20 medical judgement, die within five days after making the initial
21 oral request, the five-day waiting period shall be waived and



1 the qualified patient may reiterate the oral request to the
2 attending provider at the any time after making the initial oral
3 request."

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

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

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

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

19 (1) Making an initial determination that a patient has a
20 terminal disease and informing the patient of the
21 medical prognosis;



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

10 SECTION 7. This Act does not affect rights and duties that

11 matured, penalties that were incurred, and proceedings that were

12 begun before its effective date.

13 SECTION 8. If any provision of this Act, or the

14 application thereof to any person or circumstance, is held

15 invalid, the invalidity does not affect other provisions or

16 applications of the Act that can be given effect without the

17 invalid provision or application, and to this end the provisions

18 of this Act are severable.

19 SECTION 9. Statutory material to be repealed is bracketed

20 and stricken. New statutory material is underscored.



S.B. NO. 442

1 SECTION 10. This Act shall take effect on July 1, 2023.

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INTRODUCED BY: _____

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S.B. NO. 442

Report Title:

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

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 five days. Waives the mandatory waiting period for those terminally ill individuals not expected to survive the mandatory waiting period.

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

