

**ACT 43**

H.B. NO. 650

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 in 2018, the State passed the Our Care, Our Choice Act to ensure that all terminally ill individuals have access to the full-range of end-of-life care options. The Our Care, Our Choice Act allows mentally capable, terminally ill individuals with six months or less to live to voluntarily request and receive prescription medication that allows the individual to die in a peaceful, humane, and dignified manner.

The legislature further finds that Hawaii's unique geography and shortage of physicians create barriers for qualified terminally ill individuals to access health care. Finding a physician may be burdensome, especially for individuals on the neighbor islands. Hawaii gives advanced practice registered nurses full scope of practice licensure; however, they do not have authority to administer medical-aid-in-dying, thereby further limiting access to care for many individuals. Furthermore, evidence from other states that authorize medical-aid-in-dying demonstrates that even with full access to a supportive health care facility and providers, a high percentage of terminally ill individuals die while waiting to complete the regulatory requirements to qualify for medication under the respective state laws. Hawaii has the longest mandatory waiting period amongst all ten medical-aid-in-dying authorized states and the District of Columbia. Many patients are not surviving the mandatory twenty days between the initial and second oral requests required for the prescription.

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

- (1) Authorize advanced practice registered nurses to practice medical-aid-in-dying in accordance with their scope of practice and prescribing authority;
- (2) Authorize licensed advanced practice registered nurses and clinical nurse specialists with psychiatric or mental health training and licensed marriage and family therapists, in addition to psychiatrists, psychologists, and clinical social workers, to provide counseling to a qualified patient;
- (3) Reduce from twenty to five days, the mandatory waiting period between the two oral requests required for a qualified patient to obtain a prescription for medication that may be self-administered to end the patient's life in accordance with applicable state law; and
- (4) Waive the mandatory waiting period for terminally ill qualified patients who are not expected to survive the mandatory waiting period.

SECTION 2. Section 327L-1, Hawaii Revised Statutes, is amended 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 the 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 measures, including prescribing medication.

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

“Attending provider” means a physician licensed pursuant to chapter 453 or 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.

3. By amending the definitions of “consulting provider” and “counseling” to read:

“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[-] or advanced practice registered nurse licensed pursuant to chapter 457 who is qualified by specialty or experience to diagnose and prescribe medication.

“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, advanced practice registered nurse or clinical nurse specialist licensed under chapter 457 with psychiatric or mental health training, or marriage and family therapist licensed pursuant to chapter 451J, 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]~~ that may interfere with the patient’s ability to make an informed decision pursuant to this chapter.”

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

~~“[H]§327L-2[H]~~ **Oral and written requests for medication; initiated.** ~~[A]n~~ Except as otherwise provided in section 327L-11(c), an adult who is capable, is a resident of the State, and has been determined by an attending provider and a consulting provider to be suffering from a terminal disease, and who has voluntarily expressed the adult’s wish to die, may, pursuant to section 327L-9, submit:

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

for a prescription for medication 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.”

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

~~“[H]§327L-9[H]~~ **Written and oral requests.** ~~[T]o~~ Except as otherwise provided in section 327L-11(c), 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]~~ no less than ~~[twenty]~~ five 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.”

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

~~“[H]§327L-11[H]~~ **Waiting periods.** ~~[N]ot~~ (a) Except as otherwise provided in subsection (c), no less than ~~[twenty]~~ five days shall elapse between the qualified patient’s initial oral request for a prescription for medication pursuant to sections 327L-2 and 327L-9, and the taking of steps to make available a prescription pursuant to section 327L-4(a)(12). ~~[Not]~~

(b) No less than forty-eight hours shall elapse between the qualified patient’s written request for a prescription for medication pursuant to sections 327L-2 and 327L-9, and the taking of steps to make available a prescription pursuant to section 327L-4(a)(12).

(c) If the qualified patient’s attending provider attests that the qualified patient will, within a reasonable medical judgment, die within five days after making the initial oral request, the five-day waiting period shall be waived and the qualified patient may reiterate the oral request to the attending provider at any time after making the initial oral request.”

## ACT 43

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]~~ before 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”]~~ “Participation in actions covered by this chapter” means ~~[to perform]~~ the performance of 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]~~ “Participation in actions covered by this chapter” 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;]~~ health care 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. 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 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 1, 2023.)