
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 at least thirty
2 states have considered enacting laws to allow mentally competent
3 adult residents who have a terminal illness to voluntarily
4 request and receive a prescription medication that would allow
5 the person to die in a peaceful, humane, and dignified manner.
6 Of these, five states – Oregon, Washington, California, Vermont,
7 and Colorado – and the District of Columbia have passed
8 legislation to allow this choice.

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



1 patients. These options also do not always result in a quick or
2 peaceful death.

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

12 (1) Confirmation by two health care providers of the
13 patient's diagnoses, prognosis, and medical decision-
14 making capacity, and the voluntariness of the
15 patient's request;

16 (2) Determination by a counselor that the patient is
17 capable, and does not appear to be suffering from
18 undertreatment or nontreatment of depression or other
19 conditions which may interfere with the patient's
20 ability to make an informed decision;



1 (3) Two oral requests from the patient, separated by not
2 less than twenty days; one signed written request that
3 is witnessed by two people, one of whom must be
4 unrelated to the patient; and one signed final
5 attestation;

6 (4) An additional waiting period between the written
7 request and the writing of the prescription; and

8 (5) The creation of strict criminal penalties for any
9 person who:

10 (A) Tampers with a person's request for a
11 prescription pursuant to this Act; or

12 (B) Coerces a person with a terminal illness to
13 request a prescription.

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

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

20 The legislature concludes that adult, terminally ill
21 residents of the State can determine their own medical treatment



1 as they near the end of life and should have a full complement
 2 of support services available, including palliative care,
 3 hospice care, aggressive medical care, and the right to choose
 4 to avoid an unnecessarily prolonged life of pain and suffering.
 5 The choice elected by an individual must be fully informed,
 6 including about options for care that are presented and
 7 discussed with health care providers in a values-neutral manner.

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

12 SECTION 2. This Act shall be known and may be cited as the
 13 "Our Care, Our Choice Act".

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

17 **"CHAPTER**

18 **OUR CARE, OUR CHOICE ACT**

19 § -1 Definitions. As used in this chapter:

20 "Adult" means an individual who is eighteen years of age or
 21 older.



1 "Attending provider" means a physician licensed pursuant to
2 chapter 453 who has responsibility for the care of the patient
3 and treatment of the patient's terminal disease.

4 "Capable" means that in the opinion of the patient's
5 attending provider or consulting provider, psychiatrist,
6 psychologist, or clinical social worker, a patient has the
7 ability to understand the patient's choices for care, including
8 risks and benefits, and make and communicate health care
9 decisions to health care providers.

10 "Consulting provider" means a physician licensed pursuant
11 to chapter 453 who is qualified by specialty or experience to
12 make a professional diagnosis and prognosis regarding the
13 patient's disease.

14 "Counseling" means one or more consultations, which may be
15 provided through telehealth, as necessary between a psychiatrist
16 licensed under chapter 453, psychologist licensed under chapter
17 465, or clinical social worker licensed pursuant to chapter 467E
18 and a patient for the purpose of determining that the patient is
19 capable, and that the patient does not appear to be suffering
20 from undertreatment or nontreatment of depression or other



1 conditions which may interfere with the patient's ability to
2 make an informed decision pursuant to this chapter.

3 "Department" means the department of health.

4 "Health care facility" shall have the same meaning as in
5 section 323D-2.

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

10 "Informed decision" means a decision by a qualified patient
11 to request and obtain a prescription to end the qualified
12 patient's life pursuant to this chapter. The informed decision
13 shall be based on an appreciation of the relevant facts and made
14 after being fully informed by the attending provider of:

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



1 (5) The possibility that the individual may choose not to
2 obtain the medication or may obtain the medication and
3 may decide not to use it; and

4 (6) The feasible alternatives or additional treatment
5 opportunities, including but not limited to comfort
6 care, hospice care, and pain control.

7 "Medically confirmed" means the medical opinion of the
8 attending provider has been confirmed by a consulting provider
9 who has examined the patient and the patient's relevant medical
10 records.

11 "Patient" means a person who is under the care of an
12 attending provider.

13 "Physician" means a doctor of medicine or osteopathy
14 licensed to practice medicine pursuant to chapter 453 by the
15 Hawaii medical board.

16 "Prescription" means prescription medication or medications
17 that the qualified patient may self-administer to end the
18 qualified patient's life pursuant to this chapter.

19 "Qualified patient" means a capable adult who is a resident
20 of the State and has satisfied the requirements of this chapter



1 in order to obtain a prescription to end the qualified patient's
2 life pursuant to this chapter.

3 "Self-administer" means an individual performing an
4 affirmative, conscious, voluntary act to take into the
5 individual's body prescription medication to end the
6 individual's life pursuant to this chapter.

7 "Telehealth" shall have the same meaning as defined in
8 section 453-1.3.

9 "Terminal disease" means an incurable and irreversible
10 disease that has been medically confirmed and will, within
11 reasonable medical judgment, produce death within six months.

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

15 § -2 Oral and written requests for medication;
16 initiated. An adult who is capable, is a resident of the State,
17 and has been determined by an attending provider and consulting
18 provider to be suffering from a terminal disease, and who has
19 voluntarily expressed the adult's wish to die, may, pursuant to
20 section -9, submit:

21 (1) Two oral requests, a minimum of twenty days apart; and



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

6 § -3 Form of the written request. (a) A valid written
 7 request for a prescription under this chapter shall be
 8 substantially in the form described in section -23, and shall
 9 be signed and dated by the qualified patient and witnessed by at
 10 least two individuals who, in the presence of the qualified
 11 patient, attest that to the best of their knowledge and belief
 12 the qualified patient is of sound mind, acting voluntarily, and
 13 is not being coerced to sign the request.

14 (b) One of the witnesses shall be a person who is not:
 15 (1) A relative of the qualified patient by blood,
 16 marriage, or adoption;
 17 (2) A person who at the time the request is signed would
 18 be entitled to any portion of the estate of the
 19 qualified patient upon death under any will, trust, or
 20 other legal instrument, or by operation of law; or



1 (3) An owner, operator, or employee of a health care
2 facility where the qualified patient is receiving
3 medical treatment or is a resident.

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

6 **§ -4 Attending provider; duties.** (a) The attending
7 provider shall:

8 (1) Make the initial determination of whether a patient
9 has a terminal disease, is capable of medical
10 decision-making, and has made the request for the
11 prescription voluntarily;

12 (2) Require that the patient demonstrate residency
13 pursuant to section -13;

14 (3) To ensure that the patient is making an informed
15 decision, inform the patient of the:

16 (A) Patient's medical diagnosis;

17 (B) Patient's prognosis;

18 (C) Potential risks associated with taking the
19 medication to be prescribed;

20 (D) Probable result of taking the medication to be
21 prescribed;



- 1 (E) Possibility that the individual may choose not to
2 obtain the medication or may obtain the
3 medication but may decide not to use it; and
4 (F) Feasible alternatives or additional treatment
5 opportunities, including but not limited to
6 comfort care, hospice care, and pain control;
- 7 (4) Refer the patient to a consulting provider for medical
8 confirmation of the diagnosis, and for a determination
9 that the patient is capable and acting voluntarily;
- 10 (5) Refer the patient for counseling;
- 11 (6) Recommend that the patient notify next of kin;
- 12 (7) Counsel the patient about the importance of having
13 another person present when the qualified patient
14 self-administers the prescription prescribed pursuant
15 to this chapter and of not self-administering the
16 prescription in a public place;
- 17 (8) Inform the patient that a qualified patient may
18 rescind the request at any time and in any manner, and
19 offer the qualified patient an opportunity to rescind
20 the request at the time of the qualified patient's
21 second oral request made pursuant to section -9;



- 1 (9) Verify, immediately prior to writing the prescription
2 for medication under this chapter, that the qualified
3 patient is making an informed decision;
- 4 (10) Fulfill the medical record documentation requirements
5 of section -12;
- 6 (11) Ensure that all appropriate steps are carried out in
7 accordance with this chapter prior to writing a
8 prescription for medication to enable a qualified
9 patient to end the qualified patient's life pursuant
10 to this chapter; and
- 11 (12) Either:
- 12 (A) Dispense medications directly, including
13 ancillary medications intended to facilitate the
14 desired effect to minimize the patient's
15 discomfort; provided that the attending provider
16 is authorized to dispense controlled substances
17 pursuant to chapter 329, has a current Drug
18 Enforcement Administration certificate, and
19 complies with any applicable administrative
20 rules; or
- 21 (B) With the qualified patient's written consent:



1 (i) Contact a pharmacist of the qualified
2 patient's choice and inform the pharmacist
3 of the prescription; and
4 (ii) Transmit the written prescription
5 personally, by mail, or electronically to
6 the pharmacist, who shall dispense the
7 medication to either the qualified patient,
8 the attending provider, or an expressly
9 identified agent of the qualified patient.

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

14 § -5 Consulting provider; confirmation. Before a
15 patient is qualified under this chapter, a consulting provider
16 shall examine the patient and the patient's relevant medical
17 records and confirm, in writing, the attending provider's
18 diagnosis that the patient is suffering from a terminal disease
19 and the attending provider's prognosis, and verify that the
20 patient is capable, is acting voluntarily, and has made an
21 informed decision.



1 § -6 **Counseling referral.** The attending provider shall
2 refer the patient for counseling. No medication to end a
3 patient's life pursuant to this chapter shall be prescribed
4 until the person performing the counseling determines that the
5 patient is capable, and does not appear to be suffering from
6 undertreatment or nontreatment of depression or other conditions
7 which may interfere with the patient's ability to make an
8 informed decision pursuant to this chapter.

9 § -7 **Informed decision.** No qualified patient shall
10 receive a prescription for medication to end the qualified
11 patient's life pursuant to this chapter unless the qualified
12 patient has made an informed decision. Immediately prior to
13 writing a prescription under this chapter, the attending
14 provider shall verify that the qualified patient is making an
15 informed decision.

16 § -8 **Family notification.** The attending provider shall
17 recommend that the qualified patient notify the qualified
18 patient's next of kin of the request for a prescription pursuant
19 to this chapter. A qualified patient who declines or is unable
20 to notify next of kin shall not have the qualified patient's
21 request denied solely for that reason.



1 § -9 **Written and oral requests.** To receive a
2 prescription for medication that a qualified patient may self-
3 administer to end the qualified patient's life pursuant to this
4 chapter, a qualified patient shall have made an oral request and
5 a written request, and reiterate the oral request to the
6 qualified patient's attending provider not less than twenty days
7 after making the initial oral request. At the time the
8 qualified patient makes the second oral request, the attending
9 provider shall offer the qualified patient an opportunity to
10 rescind the request.

11 § -10 **Right to rescind request.** A qualified patient may
12 rescind the request at any time and in any manner without regard
13 to the qualified patient's mental state. No prescription under
14 this chapter shall be made available pursuant to section -
15 4(a)(12) if the attending provider has not offered the qualified
16 patient an opportunity to rescind the request at the time of the
17 second oral request made pursuant to section -9.

18 § -11 **Waiting periods.** Not less than twenty days shall
19 elapse between the qualified patient's initial oral request and
20 the taking of steps to make available a prescription pursuant to
21 section -4(a)(12). Not less than forty-eight hours shall



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

4 § -12 **Medical record; documentation requirements.** The
5 following shall be documented or filed in a qualified patient's
6 medical record:

- 7 (1) All oral requests by the qualified patient for a
8 prescription to end the qualified patient's life
9 pursuant to this chapter;
- 10 (2) All written requests by the qualified patient for a
11 prescription to end the qualified patient's life
12 pursuant to this chapter;
- 13 (3) The attending provider's diagnosis and prognosis and
14 determination that the qualified patient is capable,
15 acting voluntarily, and has made an informed decision;
- 16 (4) The consulting provider's diagnosis and prognosis and
17 verification that the qualified patient is capable,
18 acting voluntarily, and has made an informed decision;
- 19 (5) The counselor's statement of determination that the
20 patient is capable, and does not appear to be
21 suffering from undertreatment or nontreatment of



1 depression or other conditions which may interfere
2 with the patient's ability to make an informed
3 decision pursuant to this chapter;

4 (6) The attending provider's offer to the qualified
5 patient to rescind the patient's request at the time
6 of the qualified patient's second oral request made
7 pursuant to section -9; and

8 (7) A statement by the attending provider indicating that
9 all requirements under this chapter have been met and
10 indicating the steps taken to carry out the request,
11 including identification of the medication prescribed.

12 § -13 Residency requirement. Only requests made by
13 residents of this State shall be granted under this chapter.
14 Factors demonstrating state residency include but are not
15 limited to:

16 (1) Possession of a Hawaii driver's license or civil
17 identification card;

18 (2) Registration to vote in Hawaii;

19 (3) Evidence that the patient owns or leases property in
20 Hawaii; or



1 (4) Filing of a Hawaii tax return for the most recent tax
2 year.

3 § -14 Reporting requirements. (a) Within thirty
4 calendar days of writing a prescription, the attending provider
5 shall submit a copy of the qualified patient's written request,
6 as well as copy of all the documentation required pursuant to
7 section -12 to the department.

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

14 (c) The department shall annually collect and review all
15 information submitted pursuant to this chapter. The information
16 collected shall be confidential and shall be collected in such a
17 manner that protects the privacy of all qualified patients, the
18 qualified patients' family, and any attending provider,
19 consulting provider, or counselor involved with a qualified
20 patient pursuant to this chapter. Information collected
21 pursuant to this section by the department shall not be



1 disclosed, discoverable, or compelled to be produced in any
2 civil, criminal, administrative, or other proceeding.

3 (d) On or before July 1, 2019, and each year thereafter,
4 the department shall create a report of information collected
5 under subsection (c) and vital statistics records maintained by
6 the department and shall post the report on the department's
7 website. Information contained in the report shall only
8 include:

- 9 (1) The number of qualified patients for whom a
10 prescription was written pursuant to this chapter;
- 11 (2) The number of known qualified patients who died each
12 year for whom a prescription was written pursuant to
13 this chapter and the cause of death of those qualified
14 patients;
- 15 (3) The total number of prescriptions written pursuant to
16 this chapter for the year in which the report was
17 created as well as cumulatively for all years
18 beginning with 2019;
- 19 (4) The total number of qualified patients who died while
20 enrolled in hospice or other similar palliative care
21 program;



- 1 (5) The number of known deaths in Hawaii from a
2 prescription written pursuant to this chapter per
3 five-thousand deaths in Hawaii;
- 4 (6) The number of attending providers who wrote
5 prescriptions pursuant to this chapter;
- 6 (7) Of the people who died as a result of self-
7 administering a prescription pursuant to this chapter,
8 the individual's:
- 9 (A) Age at death;
- 10 (B) Education level;
- 11 (C) Race;
- 12 (D) Sex;
- 13 (E) Type of insurance, if any; and
- 14 (F) Underlying illness; and
- 15 (8) Any other data deemed appropriate by the department.

16 **§ -15 Disposal of unused medication.** A person who has
17 custody or control of any unused medication dispensed under this
18 chapter after the death of a qualified patient shall personally
19 deliver the unused medication for disposal to the nearest
20 qualified facility that properly disposes of controlled



1 substances, or if none is available, shall dispose of it by
2 lawful means.

3 **§ -16 Effect on construction of wills or contracts. (a)**

4 No provision in any will or contract, or other agreement,
5 whether written or oral, to the extent the provision would
6 affect whether a person may make or rescind a request for a
7 prescription to end the person's life pursuant to this chapter,
8 shall be valid.

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

13 **§ -17 Insurance or annuity policies.** The sale,
14 procurement, or issuance of any life, health, or accident
15 insurance or annuity policy or the rate charged for any such
16 policy shall not be conditioned upon or affected by the making
17 or rescinding of a request, by a person, for a prescription to
18 end the person's life pursuant to this chapter. A qualified
19 patient's act of using medication to end the qualified patient's
20 life pursuant to this chapter shall have no effect upon a life,
21 health, or accident insurance or annuity policy.



1 **§ -18 Construction of chapter.** (a) Nothing in this
2 chapter shall be construed to authorize a health care provider,
3 health care facility, or any other person to end a patient's
4 life by lethal injection, mercy killing, or active euthanasia.
5 Actions taken in accordance with this chapter shall not, for any
6 purpose, constitute suicide, assisted suicide, mercy killing,
7 murder, manslaughter, negligent homicide, or any other criminal
8 conduct under the law.

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

13 **§ -19 Immunities; basis for prohibiting health care**
14 **provider from participation; notification; permissible**
15 **sanctions.** (a) Except as provided in section -20 and
16 subsection (c):

17 (1) No person shall be subject to civil or criminal
18 liability or professional disciplinary action for
19 participating or acting in good faith compliance with
20 this chapter, including being present when a qualified
21 patient self-administers the prescribed medication to



- 1 end the qualified patient's life pursuant to this
2 chapter;
- 3 (2) No professional organization or association, health
4 care provider, or health care facility shall subject
5 any person to censure, discipline, suspension, loss of
6 license, loss of privileges, loss of membership, or
7 other penalty for participating or refusing to
8 participate in good faith compliance with this
9 chapter;
- 10 (3) No request by a qualified patient for a prescription
11 or provision by a health care provider of a
12 prescription or medication in good faith compliance
13 with this chapter shall constitute neglect, harm,
14 self-neglect, or abuse for any purpose of law or
15 provide the sole basis for the appointment of a
16 guardian or conservator;
- 17 (4) No health care provider or health care facility shall
18 be under any duty, whether by contract, statute, or
19 any other legal requirement, to participate in the
20 provision to a qualified patient of a prescription or
21 of medication to end the qualified patient's life



1 pursuant to this chapter. If a health care provider
2 is unable or unwilling to carry out a patient's
3 request under this chapter and the patient transfers
4 the patient's care to a new health care provider, the
5 prior health care provider shall transfer, upon
6 request, a copy of the patient's relevant medical
7 records to the new health care provider; and

8 (5) No health care facility shall be subject to civil or
9 criminal liability for acting in good faith compliance
10 with this chapter.

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



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

7 (1) Loss of privileges, loss of membership, or other
8 sanction provided pursuant to the medical staff
9 bylaws, policies, and procedures of the health care
10 facility if the health care provider is a member of
11 the health care facility's medical staff and
12 participates in actions covered by this chapter while
13 on the premises of the health care facility other than
14 in the private medical office of the health care
15 provider;

16 (2) Termination of lease or other property contract or
17 other nonmonetary remedies provided by lease contract,
18 not including loss or restriction of medical staff
19 privileges or exclusion from a provider panel, if the
20 health care provider participates in actions covered
21 by this chapter while on the premises of the health



1 care facility or on property that is owned by or under
2 the direct control of the health care facility; or
3 (3) Termination of contract or other nonmonetary remedies
4 provided by contract if the health care provider
5 participates in actions covered by this chapter while
6 acting in the course and scope of the health care
7 provider's capacity as an employee or independent
8 contractor of the health care facility; provided that
9 nothing in this paragraph shall be construed to
10 prevent:
11 (A) A health care provider from participating in
12 actions covered by this chapter while acting
13 outside the course and scope of the health care
14 provider's capacity as an employee or independent
15 contractor; or
16 (B) A patient from contracting with the patient's
17 attending provider, consulting provider, or
18 counselor to act outside the course and scope of
19 those providers' capacity as an employee or
20 independent contractor of the health care
21 facility.



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

5 (e) For the purposes of this section:

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

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

- 17 (1) Making an initial determination that a patient has a
18 terminal disease and informing the patient of the
19 medical prognosis;
- 20 (2) Providing information about this chapter to a patient
21 upon the request of the patient;



- 1 (3) Providing a patient, upon the request of the patient,
2 with a referral to another physician; or
- 3 (4) Entering into a contract with a patient as the
4 patient's attending provider, consulting provider, or
5 counselor to act outside of the course and scope of
6 the health care provider's capacity as an employee or
7 independent contractor of a health care facility.
- 8 (f) Action taken pursuant to sections -4 through -6
9 shall not be the sole basis for disciplinary action under
10 sections 453-8, 465-13, or 467E-12.
- 11 § -20 Prohibited acts; penalties. (a) Any person who
12 intentionally makes, completes, alters, or endorses a request
13 for a prescription made pursuant to section -2, for another
14 person, or conceals or destroys any documentation of a
15 rescission of a request for a prescription completed by another
16 person, shall be guilty of a class A felony.
- 17 (b) Any person who knowingly coerces or induces a patient
18 by force, threat, fraud, or intimidation to request a
19 prescription pursuant to section -2, shall be guilty of a
20 class A felony.



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

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

7 **§ -21 Claims by governmental entity for costs incurred.**

8 Any governmental entity that incurs costs resulting from a
9 person terminating the person's life pursuant to this chapter in
10 a public place shall have a claim against the estate of the
11 person to recover costs and reasonable attorneys' fees related
12 to enforcing the claim.

13 **§ -22 Severability.** Any provision of this chapter that
14 is held invalid as to any person or circumstance shall not
15 affect the application of any other provision of this chapter
16 that can be given full effect without the invalid provision or
17 application.

18 **§ -23 Form of the request.** A request for a prescription
19 as authorized by this chapter shall be in substantially the
20 following form:

21 "REQUEST FOR MEDICATION TO END MY LIFE



1 I, _____, am an adult of sound mind.

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

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

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

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

17 INITIAL ONE:

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

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



1 _____ I have no family to inform of my decision.

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

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

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

11 Signed: _____

12 Dated: _____

13 DECLARATION OF WITNESSES

14 We declare that the person signing this request:

15 (a) Is personally known to us or has provided proof of
16 identity;

17 (b) Signed this request in our presence;

18 (c) Appears to be of sound mind and not under duress or to
19 have been induced by fraud, or subjected to undue
20 influence when signing the request; and



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

3 _____ Witness Date _____

4 _____ Witness Date _____

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

10 § -24 Form of final attestation. (a) A final
11 attestation form shall be given to a qualified patient at the
12 time an attending provider writes or dispenses the prescription
13 authorized by this chapter and shall be in substantially the
14 following form:

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

16 I, _____, am an adult of sound mind.

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

20 I have received counseling to determine that I am capable
21 and not suffering from undertreatment or nontreatment of



1 depression or other conditions which may interfere with my
2 ability to make an informed decision.

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

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

12 INITIAL ONE:

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

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

17 _____ I have no family to inform of my decision.

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



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

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

9 I make this request voluntarily and without reservation.

10 Signed: _____

11 Dated: _____ "

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

20 § -25 Annual report. The department shall submit to the
21 legislature an annual report no later than twenty days prior to



1 the convening of each regular session. The report shall include
2 but not be limited to:

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

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

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

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

- 15 "(b) Nothing in this section shall be construed to:
- 16 (1) Expand the authorized scope of practice of any
17 licensed physician;
- 18 (2) Limit any reporting or disciplinary provisions
19 applicable to licensed physicians and surgeons who
20 violate prescribing practices; and



1 (3) Prohibit the discipline or prosecution of a licensed
2 physician for:

3 (A) Failing to maintain complete, accurate, and
4 current records that document the physical
5 examination and medical history of a patient, the
6 basis for the clinical diagnosis of a patient,
7 and the treatment plan for a patient;

8 (B) Writing false or fictitious prescriptions for
9 controlled substances scheduled in the Federal
10 Comprehensive Drug Abuse Prevention and Control
11 Act of 1970, 21 United States Code 801 et seq. or
12 in chapter 329;

13 (C) Prescribing, administering, or dispensing
14 pharmaceuticals in violation of the provisions of
15 the Federal Comprehensive Drug Abuse Prevention
16 and Control Act of 1970, 21 United States Code
17 801 et seq. or of chapter 329;

18 (D) Diverting medications prescribed for a patient to
19 the licensed physician's own personal use; and



1 (E) Causing, or assisting in causing, the suicide,
2 euthanasia, or mercy killing of any individual;
3 provided that ~~it~~:

4 (i) It is not "causing, or assisting in causing,
5 the suicide, euthanasia, or mercy killing of
6 any individual" to prescribe, dispense, or
7 administer medical treatment for the purpose
8 of treating severe acute pain or severe
9 chronic pain, even if the medical treatment
10 may increase the risk of death, so long as
11 the medical treatment is not also furnished
12 for the purpose of causing, or the purpose
13 of assisting in causing, death for any
14 reason[-]; and

15 (ii) This subparagraph shall not apply to actions
16 taken under chapter ."

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

19 "(1) Except as provided in section 707-701, a person
20 commits the offense of murder in the second degree if the person
21 intentionally or knowingly causes the death of another



1 person[-]; provided that this section shall not apply to actions
2 taken under chapter ."

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

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

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

8 (b) The person intentionally causes another person to
9 commit suicide[-];

10 provided that this section shall not apply to actions taken
11 under chapter ."

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

20 (1) The data set to be collected and tracked by the
21 department;



1 (2) The preparation of appropriate forms and checklists
2 for use by attending providers, consulting providers,
3 and counselors; and

4 (3) Otherwise assisting the department with the
5 implementation of chapter , Hawaii Revised
6 Statutes.

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

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

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

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



H.B. NO. 2739
H.D. 1

Report Title:

Health; Our Care, Our Choice Act

Description:

Establishes a regulated process under which an adult resident of the State with a medically confirmed terminal disease and less than six months to live may choose to obtain a prescription for medication to end the patient's life. Imposes criminal sanctions for tampering with a patient's request for a prescription or coercing a patient to request a prescription.
(HB2739 HD1)

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

HB2739 HD1 HMS 2018-2712

