

JAN 17 2020

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# 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 Act allows mentally capable,  
5 terminally ill individuals to voluntarily request and receive  
6 prescription medication that allows the person to die in a  
7 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; and
- 14 (2) Reduce the mandatory waiting period between oral  
15 requests from twenty days to fifteen days; and
- 16 (3) Provide an expedited pathway for those terminally ill  
17 individuals not expected to survive the mandatory  
18 waiting period.

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

21 "[+]§327L-1[+] Definitions. As used in this chapter:



1 "Adult" means an individual who is eighteen years of age or  
2 older.

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

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

14 "Capable" means that in the opinion of the patient's  
15 attending provider or consulting provider, psychiatrist,  
16 psychologist, or clinical social worker, a patient has the  
17 ability to understand the patient's choices for care, including  
18 risks and benefits, and make and communicate health care  
19 decisions to health care providers.

20 "Consulting provider" means a physician licensed pursuant  
21 to chapter 453 who is qualified by specialty or experience to



1 make a professional diagnosis and prognosis regarding the  
2 patient's disease[-], or an advanced practice registered nurse  
3 licensed pursuant to chapter 457, who is qualified by specialty  
4 or experience to diagnose and prescribe medication.

5 "Counseling" means one or more consultations, which may be  
6 provided through telehealth, as necessary between a psychiatrist  
7 licensed under chapter 453, psychologist licensed under chapter  
8 465, or clinical social worker licensed pursuant to chapter 467E  
9 and a patient for the purpose of determining that the patient is  
10 capable, and that the patient does not appear to be suffering  
11 from undertreatment or nontreatment of depression or other  
12 conditions which may interfere with the patient's ability to  
13 make an informed decision pursuant to this chapter.

14 "Department" means the department of health.

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

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



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

- 6 (1) The medical diagnosis;
- 7 (2) The prognosis;
- 8 (3) The potential risks associated with taking the  
9 medication to be prescribed;
- 10 (4) The probable result of taking the medication to be  
11 prescribed;
- 12 (5) The possibility that the individual may choose not to  
13 obtain the medication or may obtain the medication and  
14 may decide not to use it; and
- 15 (6) The feasible alternatives or additional treatment  
16 opportunities, including but not limited to comfort  
17 care, hospice care, and pain control.

18 "Medically confirmed" means the medical opinion of the  
19 attending provider has been confirmed by a consulting provider  
20 who has examined the patient and the patient's relevant medical  
21 records.



1 "Patient" means a person who is under the care of an  
2 attending provider.

3 "Physician" means a doctor of medicine or osteopathy  
4 licensed to practice medicine pursuant to chapter 453 by the  
5 Hawaii medical board.

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

9 "Qualified patient" means a capable adult who is a resident  
10 of the State and has satisfied the requirements of this chapter  
11 in order to obtain a prescription to end the qualified patient's  
12 life pursuant to this chapter.

13 "Self-administer" means an individual performing an  
14 affirmative, conscious, voluntary act to take into the  
15 individual's body prescription medication to end the  
16 individual's life pursuant to this chapter.

17 "Telehealth" shall have the same meaning as defined in  
18 section 453-1.3.

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



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

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

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

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

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

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



1           " [f] §327L-9 [f] **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~~  
7 fifteen days after making the initial oral request. At the time  
8 the qualified patient makes the second oral request, the  
9 attending provider shall offer the qualified patient an  
10 opportunity to rescind the request."

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

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

17           (b) Not less than forty-eight hours shall elapse between  
18 the qualified patient's written request and the taking of steps  
19 to make available a prescription pursuant to section  
20 327L-4(a)(12).





1        (c) If the terminally ill individual's attending provider  
2 attests that the individual will, within a reasonable medical  
3 judgment, die within fifteen days after making the initial oral  
4 request, the fifteen day waiting period shall be waived and the  
5 terminally ill individual may reiterate the oral request to the  
6 attending provider at any time after making the initial oral  
7 request."

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

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

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

17        "Participate in actions covered by this chapter" means to  
18 perform the duties of an attending provider pursuant to section  
19 327L-4, the consulting provider function pursuant to section  
20 327L-5, or the counseling referral function or counseling  
21 pursuant to section 327L-6. The term does not include:



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

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

16           SECTION 8. If any provision of this Act, or the  
17 application thereof to any person or circumstance, is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.



# S.B. NO. 2582

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

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

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INTRODUCED BY:         *Randy L Baker*          
        *Clarence K. Washburn*          
        *Karl Rhoads*        



# S.B. NO. 2582

**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. 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.

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

