A BILL FOR AN ACT

RELATING TO END OF LIFE OPTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

END OF LIFE OPTION ACT

§ 1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

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

"Aid-in-dying drug" means a drug determined and prescribed by a physician for a qualified individual, which the qualified individual may choose to self-administer to terminate the individual's own life.

"Attending physician" means the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease.
"Attending physician checklist and compliance form" means a form, as described in section 22, identifying each and every requirement that shall be fulfilled by an attending physician to be in good faith compliance with this chapter should the attending physician choose to participate.

"Capacity to make medical decisions" means that, in the opinion of a court or an individual's attending physician, consulting physician, psychiatrist, or psychologist, the individual has the ability to:

1. Understand the nature, consequences, significant benefits, risks, and alternatives of a health care decision; and
2. Make and communicate informed health care decisions to health care providers, including communication through persons familiar with the individual's manner of communicating if those persons are available.

"Consulting physician" means a physician who is independent from the attending physician and who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's terminal disease.

"Department" means the department of health.
"Health care provider" or "provider of health care" means a person licensed, certified, or otherwise authorized or permitted by the law of this State to administer health care or dispense medication in the ordinary course of business or practice of a profession and includes a health care facility.

"Informed decision" means a decision by an individual with a terminal disease to request and obtain a prescription for a drug that the individual may self-administer to end the individual's life, that is based on an understanding and acknowledgment of the relevant facts, and that is made after being fully informed by the attending physician of:

1. The individual's medical diagnosis and prognosis;
2. The potential risks associated with taking the drug to be prescribed;
3. The probable result of taking the drug to be prescribed;
4. The possibility that the individual may choose not to obtain the drug or may obtain the drug, but may decide not to ingest it; and
(5) The feasible alternatives or additional treatment opportunities, including comfort care, hospice care, palliative care, and pain control.

"Medically confirmed" means the medical diagnosis and prognosis of the attending physician has been confirmed by a consulting physician who has examined the individual and the individual's relevant medical records.

"Mental health specialist assessment" means one or more consultations between an individual and a mental health specialist for the purpose of determining that the individual has the capacity to make medical decisions that affects the individual and does not suffer from impaired judgment due to a mental disorder.

"Mental health specialist" means a psychiatrist or a licensed psychologist.

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

"Public place" means any street, alley, park, public building, any place of business or assembly open to or
frequented by the public, and any other place that is open to
the public view, or to which the public has access.

"Qualified individual" means an adult who has the capacity
to make medical decisions, is a resident of Hawaii, and has
satisfied the requirements of this chapter to obtain a
prescription for a drug to end the individual's life.

"Self-administer" means a qualified individual's
affirmative, conscious, and physical act of administering and
ingesting the aid-in-dying drug to bring about the individual's
own death.

"Terminal disease" means an incurable and irreversible
disease that has been medically confirmed and will, within
reasonable medical judgment, result in death within six months.

§ -2 Request to receive aid-in-dying drug; eligibility;
request to be made solely by individual. (a) An individual who
is an adult with the capacity to make medical decisions and with
a terminal disease may make a request to receive a prescription
for an aid-in-dying drug if:

(1) The individual's attending physician has diagnosed the
individual with a terminal disease;
(2) The individual has voluntarily expressed the wish to receive a prescription for an aid-in-dying drug;

(3) The individual is a resident of Hawaii and is able to establish residency through:

(A) Possession of a Hawaii driver's license or other identification issued by the State;

(B) Registration to vote in Hawaii;

(C) Evidence that the person owns or leases property in Hawaii; or

(D) Filing of a Hawaii tax return for the most recent tax year;

(4) The individual documents the request pursuant to the requirements set forth in section -3; and

(5) The individual has the physical and mental ability to self-administer the aid-in-dying drug.

(b) A person shall not be considered a "qualified individual" under the provisions of this chapter solely because of age or disability.

(c) A request for a prescription for an aid-in-dying drug under this chapter shall be made solely and directly by the individual diagnosed with the terminal disease. The request
shall not be made on behalf of the patient, through a power of attorney, an advance health care directive, a conservator, health care agent, surrogate, or any other legally recognized health care decision-maker.

§ 3 Oral and written requests for aid-in-dying drug; written request requirements; witness requirements. (a) An individual seeking to obtain a prescription for an aid-in-dying drug pursuant to this chapter shall submit two oral requests, a minimum of fifteen days apart, and a written request to the individual's attending physician. The attending physician shall directly, and not through a designee, receive all three requests required pursuant to this section.

(b) A valid written request for an aid-in-dying drug under subsection (a) shall be:

(1) In the form prescribed in section -11;

(2) Signed and dated, in the presence of two witnesses, by the individual seeking the aid-in-dying drug;

(3) Witnessed by at least two other adult persons who, in the presence of the individual, shall attest that to the best of their knowledge and belief the individual is:
(A) An individual who is personally known to them or has provided proof of identity;

(B) An individual who voluntarily signed this request in their presence;

(C) An individual whom they believe to be of sound mind and not under duress, fraud, or undue influence; and

(D) Not an individual for whom either of them is the attending physician, consulting physician, or mental health specialist.

(c) Only one of the two witnesses at the time the written request is signed may:

(1) Be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the individual's estate upon death; or

(2) Own, operate, or be employed at a health care facility where the individual is receiving medical treatment or resides.
(d) The attending physician, consulting physician, or mental health specialist of the individual shall not be one of the witnesses required by subsection (b)(3).

§ -4 Withdrawal of request for aid-in-dying drug. (a) An individual may at any time withdraw or rescind the individual's request for an aid-in-dying drug, or decide not to ingest an aid-in-dying drug, without regard to the individual's mental state.

(b) A prescription for an aid-in-dying drug provided under this chapter shall be written by the attending physician, not through a designee, who shall offer the individual an opportunity to withdraw or rescind the request.

§ -5 Determinations required prior to prescription of aid-in-dying drug; delivery of aid-in-dying drug. (a) Before prescribing an aid-in-dying drug, the attending physician shall:

(1) Make the initial determination of:

(A) Whether the requesting adult has the capacity to make medical decisions:

(i) If there are indications of a mental disorder, the physician shall refer the
individual for a mental health specialist assessment; or

(ii) If a mental health specialist assessment referral is made, no aid-in-dying drugs shall be prescribed until the mental health specialist determines that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder;

(B) Whether the requesting adult has a terminal disease;

(C) Whether the requesting adult has voluntarily made the request for an aid-in-dying drug pursuant to sections -2 and -3; and

(D) Whether the requesting adult is a qualified individual;

(2) Confirm that the individual is making an informed decision by discussing:

(A) The individual's medical diagnosis and prognosis;

(B) The potential risks associated with ingesting the requested aid-in-dying drug;
(C) The probable result of ingesting the aid-in-dying drug;

(D) The possibility that the individual may choose to obtain the aid-in-dying drug but not take it; and

(E) The feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control;

(3) Refer the individual to a consulting physician for medical confirmation of the diagnosis and prognosis, and for a determination that the individual has the capacity to make medical decisions and has complied with the provisions of this chapter;

(4) Confirm that the qualified individual's request does not arise from coercion or undue influence by another person by discussing with the qualified individual, outside of the presence of any other persons, except for an interpreter as required pursuant to this chapter, regardless of whether the qualified individual is feeling coerced or unduly influenced by another person;
(5) Counsel the qualified individual about the importance of:

(A) Having another person present when the individual ingests the aid-in-dying drug prescribed pursuant to this chapter;

(B) Not ingesting the aid-in-dying drug in a public place;

(C) Notifying the next of kin of the individual's request for an aid-in-dying drug. A qualified individual's request shall not be denied because the individual declines or is unable to notify next of kin;

(D) Participating in a hospice program; and

(E) Maintaining the aid-in-dying drug in a safe and secure location until the time that the qualified individual will ingest it;

(6) Inform the individual that the individual may withdraw or rescind the request for an aid-in-dying drug at any time and in any manner;
(7) Offer the individual an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing the aid-in-dying drug;

(8) Verify, immediately before writing the prescription for an aid-in-dying drug, that the qualified individual is making an informed decision;

(9) Confirm that all requirements are met and all appropriate steps are carried out in accordance with this chapter before writing a prescription for an aid-in-dying drug;

(10) Fulfill the record documentation required by sections -8, -9, and -19;

(11) Complete the attending physician checklist and compliance form, as prescribed in section -22, include it and the consulting physician compliance form in the individual's medical record, and submit both forms to the department; and

(12) Give the qualified individual the final attestation form, with the instruction that the form be filled out and executed by the qualified individual within forty-
eight hours prior to the qualified individual choosing
to self-administer the aid-in-dying drug.

(b) If the conditions set forth in subsection (a) are
satisfied, the attending physician may deliver the aid-in-dying
drug:

(1) By dispensing the aid-in-dying drug directly,
including ancillary medication intended to minimize
the qualified individual's discomfort, if the
attending physician:

(A) Is authorized to dispense medicine in Hawaii;

(B) Has a current United States Drug Enforcement
Administration certificate; and

(C) Complies with all applicable administrative rules
or regulations; or

(2) With the qualified individual's written consent, by
contacting a pharmacist, informing the pharmacist of
the prescriptions, and delivering the written
prescriptions personally, by mail, or electronically
to the pharmacist, who may dispense the drug to the
qualified individual, the attending physician, or a
person expressly designated by the qualified
individual and with the designation delivered to the pharmacist in writing or verbally.

(c) Delivery of the dispensed drug to the qualified individual, the attending physician, or a person expressly designated by the qualified individual may be made by personal delivery, or, with a signature required on delivery, by United States Postal Service, messenger service, courier service, or package delivery service.

§-6 Duties performed by consulting physician. Before a qualified individual obtains an aid-in-dying drug from the attending physician, the consulting physician shall:

(1) Examine the individual and relevant medical records;

(2) Confirm in writing the attending physician's diagnosis and prognosis;

(3) Determine that the individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision;

(4) If there are indications of a mental disorder, refer the individual for a mental health specialist assessment;
(5) Fulfill the record documentation required under this chapter; and

(6) Submit the compliance form to the attending physician.

§ 7 Duties to be performed by mental health specialist.

Upon referral from the attending or consulting physician pursuant to this chapter, the mental health specialist shall:

(1) Examine the qualified individual and relevant medical records;

(2) Determine that the individual has the mental capacity to make medical decisions, act voluntarily, and make an informed decision;

(3) Determine that the individual is not suffering from impaired judgment due to a mental disorder; and

(4) Fulfill the record documentation requirements of this chapter.

§ 8 Items to be documented in individual’s medical record. Documents in the individual's medical record shall include:

(1) All oral requests for aid-in-dying drugs;

(2) All written requests for aid-in-dying drugs;
(3) The attending physician's diagnosis and prognosis, and
the determination that a qualified individual has the
capacity to make medical decisions, is acting
voluntarily, and has made an informed decision, or
that the attending physician has determined that the
individual is not a qualified individual;

(4) The consulting physician's diagnosis and prognosis,
and verification that the qualified individual has the
capacity to make medical decisions, is acting
voluntarily, and has made an informed decision, or
that the consulting physician has determined that the
individual is not a qualified individual;

(5) A report of the outcome and determinations made during
a mental health specialist's assessment, if performed;

(6) The attending physician's offer to the qualified
individual to withdraw or rescind the individual's
request at the time of the individual's second oral
request; and

(7) A note by the attending physician indicating that all
requirements under sections -5 and -6 have been
met and recording the steps taken to carry out the
request, including a notation of the aid-in-dying drug
prescribed.

§ -9 Submission of qualifying patient's documents to the
department; time requirement. (a) Within thirty calendar days
after writing a prescription for an aid-in-dying drug, the
attending physician shall submit to the department a copy of the
qualifying patient's written request, the attending physician
checklist and compliance form, and the consulting physician
compliance form.

(b) Within thirty calendar days after the qualified
individual's death from ingesting the aid-in-dying drug, or any
other cause, the attending physician shall submit the attending
physician follow-up form to the department.

§ -10 Informed decision by qualified individual. A
qualified individual may not receive a prescription for an aid-
in-dying drug pursuant to this chapter unless the individual has
made an informed decision. Immediately before writing a
prescription for an aid-in-dying drug under this chapter, the
attending physician shall verify that the individual is making
an informed decision.
§ -11 Form for aid-in-dying drug request; translation; final attestation form. (a) A request for an aid-in-dying drug as authorized by this chapter shall be in the following form:

"REQUEST FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER I, ......................, am an adult of sound mind and a resident of the State of Hawaii. I am suffering from ................., which my attending physician has determined is in its terminal phase and which has been medically confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying drug to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control.

I request that my attending physician prescribe an aid-in-dying drug that will end my life in a humane and dignified manner if I choose to take it, and I authorize my attending physician to contact any pharmacist about my request.

INITIAL ONE:
I have informed one or more members of my family of my decision and taken their opinions into consideration.

I have decided not to inform my family of my decision.

I have no family to inform of my decision.

I understand that I have the right to withdraw or rescind this request at any time.

I understand the full import of this request and I expect to die if I take the aid-in-dying drug to be prescribed. My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.

I make this request voluntarily, without reservation, and without being coerced.

Signed:

Dated:

DECLARATION OF WITNESSES

We declare that the person signing this request:

(a) is personally known to us or has provided proof of identity;

(b) voluntarily signed this request in our presence;
(c) is an individual whom we believe to be of sound mind and not under duress, fraud, or undue influence; and

(d) is not an individual for whom either of us is the attending physician, consulting physician, or mental health specialist.

...............Witness 1/Date
...............Witness 2/Date

NOTE: Only one of the two witnesses may be a relative (by blood, marriage, registered domestic partnership, or adoption) of the person signing this request or be entitled to a portion of the person's estate upon death. Only one of the two witnesses may own, operate, or be employed at a health care facility where the person is a patient or resident."

(b) The written language of the request shall be written in the same translated language as any conversations, consultations, or interpreted conversations or consultations between a patient and the patient's attending or consulting physicians.

The written request may be prepared in English even when the conversations or consultations or interpreted conversations or consultations were conducted in a language other than English
if the English language form includes an attached interpreter's declaration that is signed under penalty of perjury. The interpreter's declaration shall state words to the effect that:

"I, (INSERT NAME OF INTERPRETER), am fluent in English and (INSERT TARGET LANGUAGE).

On (insert date) at approximately (insert time), I read the "Request for an Aid-In-Dying Drug to End My Life" to (insert name of individual/patient) in (insert target language).

Mr./Ms. (insert name of patient/qualified individual) affirmed to me that he/she understood the content of this form and affirmed his/her desire to sign this form under his/her own power and volition and that the request to sign the form followed consultations with an attending and consulting physician.

I declare that I am fluent in English and (insert target language) and further declare under penalty of perjury that the foregoing is true and correct.

Executed at (insert city, county, and state) on this (insert day of month) of (insert month), (insert year).

X_______ Interpreter signature

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The interpreter who provides services pursuant to this section shall:

1. Not be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the person's estate upon death; and
2. Be certified by the judiciary's court interpreter certification program.

(c) The final attestation form given by the attending physician to the qualified individual at the time the attending physician writes the prescription shall appear in the following form:

"FINAL ATTESTATION FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER I, .................., am an adult of sound mind and a resident of the State of Hawaii. I am suffering from .................., which my attending physician has determined is in its terminal phase and which has been medically confirmed.
I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying drug to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control. I have received the aid-in-dying drug and am fully aware that this aid-in-dying drug will end my life in a humane and dignified manner.

INITIAL ONE:

............ I have informed one or more members of my family of my decision and taken their opinions into consideration.

............ I have decided not to inform my family of my decision.

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

My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.

I make this decision to ingest the aid-in-dying drug to end my life in a humane and dignified manner. I understand I still may choose not to ingest the drug and by signing this form I am
under no obligation to ingest the drug. I understand I may rescind this request at any time.

Signed:

Dated:

Time:

With regard to the final attestation:

(1) Within forty-eight hours prior to the individual self-administering the aid-in-dying drug, the individual shall complete the final attestation form. If aid-in-dying medication is not returned or relinquished upon the patient's death as required in section -20, the completed form shall be delivered by the individual's health care provider, family member, or other representative to the attending physician to be included in the patient's medical record; and

(2) Upon receiving the final attestation form the attending physician shall add this form to the medical records of the qualified individual.
§ 12 Validity of contract or will provisions regarding requests for aid-in-dying drugs. (a) A provision in a contract, will, or other agreement executed on or after June 30, 2017, whether written or oral, to the extent the provision would affect whether a person may make, withdraw, or rescind a request for an aid-in-dying drug is not valid.

(b) An obligation owing under any contract executed on or after June 30, 2017, may not be conditioned or affected by a qualified individual making, withdrawing, or rescinding a request for an aid-in-dying drug.

§ 13 Sale, procurement, or issuance of policy, accident and health or sickness insurance, or health benefit plan or rate charged; prohibition against conditioning policy or rate on making or rescinding request for aid-in-dying drug; effect of self-administration of aid-in-dying drugs; communications from insurance carrier. (a) The sale, procurement, or issuance of a life, health, or annuity policy, accident and health or sickness insurance, or health benefit plan, or the rate charged for a policy or plan contract may not be conditioned upon or affected by a person making or rescinding a request for an aid-in-dying drug.
Pursuant to section -18, death resulting from the self-administration of an aid-in-dying drug is not suicide, and health and insurance coverage shall not be denied on that basis.

(b) Notwithstanding any other law to the contrary, a qualified individual's act of self-administering an aid-in-dying drug shall not have an effect upon a life, health, or annuity policy other than that of a natural death from the underlying disease.

(c) An insurance carrier shall not provide any information in communications made to an individual about the availability of an aid-in-dying drug absent a request by the individual or individual's attending physician at the behest of the individual. Any communication shall not include both the denial of treatment and information as to the availability of aid-in-dying drug coverage. For the purposes of this subsection, "insurance carrier" means a provider of insurance as defined in chapters 431, 431N, 432, and 432D.

§ -14 Persons present during self-administration of aid-in-dying drug; civil or criminal liability; participating health care provider shall not be subject to discipline or liability; voluntary participation. (a) Notwithstanding any other law to
the contrary, a person shall not be subject to civil or criminal
liability solely because the person was present when the
qualified individual self-administers the prescribed aid-in-
dying drug. A person who is present may, without civil or
criminal liability, assist the qualified individual by preparing
the aid-in-dying drug so long as the person does not assist the
qualified person in ingesting the aid-in-dying drug.

(b) A health care provider or professional organization or
association shall not subject an individual to censure,
discipline, suspension, loss of license, loss of privileges,
loss of membership, or other penalty for participating in good
faith compliance with this chapter or for refusing to
participate in accordance with subsection (e).

(c) Notwithstanding any other law to the contrary, a
health care provider shall not be subject to civil, criminal,
administrative, disciplinary, employment, credentialing,
professional discipline, contractual liability, or medical staff
action, sanction, or penalty or other liability for
participating in this chapter, including, determining the
diagnosis or prognosis of an individual, determining the
capacity of an individual for purposes of qualifying for the
act, providing information to an individual regarding this
chapter, and providing a referral to a physician who
participates in this chapter. Nothing in this subsection shall
be construed to limit the application of, or provide immunity
from, section -16 or -17.

(d) A request by a qualified individual to an attending
physician to provide an aid-in-dying drug in good faith
compliance with the provisions of this chapter shall not provide
the sole basis for the appointment of a guardian or conservator.

No actions taken in compliance with the provisions of this
chapter shall constitute or provide the basis for any claim of
neglect or elder abuse for any purpose of law.

(e) Participation in activities authorized pursuant to
this chapter shall be voluntary.

(1) A person or entity that elects, for reasons of
conscience, morality, or ethics, not to engage in
activities authorized pursuant to this chapter is not
required to take any action in support of an
individual's decision under this chapter;

(2) Notwithstanding any other law to the contrary, a
health care provider is not subject to civil,
criminal, administrative, disciplinary, employment, 
credentialing, professional discipline, contractual 
liability, or medical staff action, sanction, or 
penalty or other liability for refusing to participate 
in activities authorized under this chapter, including 
refusing to inform a patient of the rights under this 
chapter, and not referring an individual to a 
physician who participates in activities authorized 
under this chapter;

(3) If a health care provider is unable or unwilling to 
carry out a qualified individual's request under this 
chapter and the qualified individual transfers care to 
a new health care provider, the individual may obtain 
a copy of the individual's medical records.

§ -15 Health care providers may prohibit employees from 
participating in aid-in-dying activities; notification; actions 
after a violation; reports of unprofessional conduct. (a) 
Subject to subsection (b) and notwithstanding any other law to 
the contrary, a health care provider may prohibit its employees, 
independent contractors, or other persons or entities, including 
other health care providers, from participating in activities
under this chapter while on premises owned or under the
management or direct control of that prohibiting health care
provider or while acting within the course and scope of any
employment by, or contract with, the prohibiting health care
provider.

(b) A health care provider that elects to prohibit its
employees, independent contractors, or other persons or
entities, including health care providers, from participating in
activities under this chapter, as described in subsection (a),
shall first give notice of the policy prohibiting participation
under this chapter to the individual or entity. A health care
provider that fails to provide notice to an individual or entity
in compliance with this subsection shall not be entitled to
enforce such a policy against that individual or entity.

(c) Subject to compliance with subsection (b), the
prohibiting health care provider may take action, as applicable,
against any individual or entity that violates this policy,
including:

(1) Loss of privileges, loss of membership, or other
action authorized by the bylaws or rules and
regulations of the medical staff;
(2) Suspension, loss of employment, or other action authorized by the policies and practices of the prohibiting health care provider;

(3) Termination of any lease or other contract between the prohibiting health care provider and the individual or entity that violates the policy; and

(4) Imposition of any other nonmonetary remedy provided for in any lease or contract between the prohibiting health care provider and the individual or entity in violation of the policy.

(d) Nothing in this section shall be construed to prevent, or to allow a prohibiting health care provider to prohibit, any other health care provider, employee, independent contractor, or other person or entity from:

(1) Participating, or entering into an agreement to participate, in activities under this chapter, while on premises that are not owned or under the management or direct control of the prohibiting provider or while acting outside the course and scope of the participant's duties as an employee of, or an
independent contractor for, the prohibiting health

care provider; or

(2) Participating, or entering into an agreement to

participate, in activities under this chapter as an

attending physician or consulting physician while on

premises that are not owned or under the management or

direct control of the prohibiting provider.

(e) In taking actions pursuant to subsection (c), a health

care provider shall comply with all procedures required by law,

its own policies or procedures, and any contract with the

individual or entity in violation of the policy, as applicable.

(f) For purposes of this section:

(1) "Notice" means a separate statement in writing

advising of the prohibiting health care provider

policy with respect to participating in activities

under this chapter.

(2) "Participating, or entering into an agreement to

participate, in activities under this chapter" means

doing or entering into an agreement to do one or more

of the following:
(A) Performing the duties of an attending physician as specified in section -5;

(B) Performing the duties of a consulting physician as specified in section -6;

(C) Performing the duties of a mental health specialist, in the circumstance that a referral to one is made;

(D) Delivering the prescription for, dispensing, or delivering the dispensed aid-in-dying drug pursuant to section -5(c); or

(E) Being present when the qualified individual takes the aid-in-dying drug prescribed pursuant to this chapter.

(3) "Participating, or entering into an agreement to participate, in activities under this chapter" does not include doing, or entering into an agreement to:

(A) Diagnose whether a patient has a terminal disease, informing the patient of the medical prognosis, or determining whether a patient has the capacity to make decisions;
(B) Provide information to a patient about this chapter; or

(C) Provide a patient, upon the patient's request, with a referral to another health care provider for the purposes of participating in the activities authorized by this chapter.

(g) Complaints or sanctions pursuant to sections 453-7.5 and 453.8 shall not be based on any action taken by a prohibiting provider pursuant to this section or any action taken by a health care provider that participates in activities under this chapter.

(h) Nothing in this chapter shall prevent a health care provider from providing an individual with health care services that do not constitute participation in this chapter.

§ -16 Actions a health care provider may not be sanctioned for; actions outside the scope of employment. (a) A health care provider may not be sanctioned for:

(1) Making an initial determination pursuant to the standard of care that an individual has a terminal disease and informing the individual of the medical prognosis;
(2) Providing information about the end of life option act to a patient upon the request of the individual; or

(3) Providing an individual, upon request, with a referral to another physician.

(b) A health care provider that prohibits activities in accordance with section -15 shall not sanction an individual health care provider for contracting with a qualified individual to engage in activities authorized by this chapter if the individual health care provider is acting outside of the course and scope of the individual health care provider's capacity as an employee or independent contractor of the prohibiting health care provider.

(c) Notwithstanding any contrary provision in this section, the immunities and prohibitions on sanctions of a health care provider shall be solely reserved for actions of a health care provider taken pursuant to this chapter.

Notwithstanding any contrary provision in this chapter, health care providers may be sanctioned by their licensing board or agency for conduct and actions constituting unprofessional conduct, including failure to comply in good faith with this chapter.
§ 17 Alteration or forgery of request for aid-in-dying drug; coercion or undue influence; felony punishment; family relationship. (a) Knowingly altering or forging a request for an aid-in-dying drug to end an individual's life without the individual's authorization or concealing or destroying a withdrawal or rescission of a request for an aid-in-dying drug is punishable as a class felony if the act is done with the intent or effect of causing the individual's death.

(b) Knowingly coercing or exerting undue influence on an individual to request or ingest an aid-in-dying drug for the purpose of ending the individual's life or to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without the individual's knowledge or consent, is a class felony.

(c) For purposes of this section, the term "knowingly" is defined by section 712-206(2).

(d) The attending physician, consulting physician, or mental health specialist shall not be related to the individual by blood, marriage, registered domestic partnership, or adoption, or be entitled to a portion of the individual's estate upon death.
(e) Nothing in this section shall be construed to limit civil liability.

(f) The penalties in this section do not preclude criminal penalties applicable under any law for conduct inconsistent with the provisions of this section.

§ -18 Actions not authorized by this chapter. Nothing in this chapter may be construed to authorize a physician or any other person to end an individual's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter shall not, for any purposes, constitute suicide, assisted suicide, homicide, or elder abuse under the law.

§ -19 Collection and review of submitted information; online posting of information. (a) The department shall collect and review the information submitted pursuant to section -9. The information collected shall be confidential and shall be collected in a manner that protects the privacy of the patient, the patient's family, and any medical provider or pharmacist involved with the patient under the provisions of this chapter. The information shall not be disclosed,
discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(b) On or before July 1, 2018, and each year thereafter, based on the information collected in the previous year, the department shall create a report with the information collected from the attending physician follow-up form and post that report on the department's internet website. The report shall include the following information that is provided to the department and through the department's access to vital statistics:

(1) The number of people for whom an aid-in-dying prescription was written;

(2) The number of known individuals who died each year for whom aid-in-dying prescriptions were written, and the cause of death of those individuals;

(3) For the period commencing January 1, 2018, to and including the previous year, cumulatively, the total number of aid-in-dying prescriptions written, the number of people who died due to use of aid-in-dying drugs, and the number of those people who died who were enrolled in hospice or other palliative care programs at the time of death;
(4) The number of known deaths in Hawaii from using aid-in-dying drugs per one thousand deaths in Hawaii;
(5) The number of physicians who wrote prescriptions for aid-in-dying drugs; and
(6) Of people who died due to using an aid-in-dying drug, demographic percentages organized by the characteristics of:
   (A) Age at death;
   (B) Education level;
   (C) Race;
   (D) Sex;
   (E) Type of insurance, including whether they had insurance; and
   (F) Underlying illness.

c) The department shall make available the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician followup form, as described in section -22, by posting on the department's internet website.

§ -20 Disposal of unused aid-in-dying drugs. A person who has custody or control of any unused aid-in-dying drugs
prescribed pursuant to this chapter after the death of the
patient shall personally deliver the unused aid-in-dying drugs
for disposal by delivering it to the nearest qualified facility
that properly disposes of controlled substances, or if none is
available, shall dispose of it by lawful means in accordance
with guidelines adopted by the department or a federal Drug
Enforcement Administration approved take-back program.

§ -21 Governmental entity costs incurred due to
termination of qualified individual's own life in public place;
claim against estate. Any governmental entity that incurs costs
resulting from the termination of a qualified individual's own
life pursuant to the provisions of this chapter in a public
place shall have a claim against the estate of the qualified
individual to recover those costs and reasonable attorney fees
related to enforcing the claim.

§ -22 Attending physician checklist and compliance form,
consulting physician compliance form, and attending physician
followup form; updating of forms. (a) The department shall
adopt by rule the attending physician checklist and compliance
form, the consulting physician compliance form, and the
attending physician followup form and publish the forms on the
department's internet website."

SECTION 2. Chapter 461, Hawaii Revised Statutes, is
amended by adding a new section to be appropriately designated
and to read as follows:

"§461- Compliance with end of life option act.
Notwithstanding any law to the contrary, nothing in this chapter
shall be deemed to prohibit a registered pharmacist from
dispensing medications to a qualified individual, the qualified
individual's attending physician, or an expressly identified
agent of the qualified individual for the purpose of ending the
qualified individual's life, as provided in chapter___."

SECTION 3. Section 327E-13, Hawaii Revised Statutes, is
amended by amending subsection (c) to read as follows:

"(c) This chapter shall not authorize mercy killing,
assisted suicide, euthanasia, or the provision, withholding, or
withdrawal of health care, to the extent prohibited by other
statutes of this State. Death by the end of life option that is
authorized for qualified individuals by chapter__ is
authorized."
SECTION 4. Section 327H-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Nothing in this section shall be construed to:

(1) Expand the authorized scope of practice of any licensed physician;

(2) Limit any reporting or disciplinary provisions applicable to licensed physicians and surgeons who violate prescribing practices; and

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

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

(B) Writing false or fictitious prescriptions for controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 United States Code 801 et seq. or in chapter 329;
(C) Prescribing, administering, or dispensing pharmaceuticals in violation of the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 United States Code 801 et seq. or of chapter 329;

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

(E) Causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual; provided that it is not "causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual" to [prescribe, dispense, or administer medical treatment for the purpose of treating severe acute pain or severe chronic pain, even if the medical treatment may increase the risk of death, so long as the medical treatment is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason[—]; or
(ii) Prescribe, dispense, or administer medical
   treatment for the purpose of causing death
   unless authorized by the end of life option
   for qualified individuals pursuant to
   chapter ____.

SECTION 5. Section 334-1, Hawaii Revised Statutes, is
amended as follows:

1. By amending the definition of "Dangerous to self" to
   read:

   "Dangerous to self" means the person recently has:

   (1) Threatened or attempted suicide or serious bodily
       harm[†], but excluding the acts of a qualified
       individual pursuant to chapter ____ end of life option
       act; or

   (2) Behaved in such a manner as to indicate that the
       person is unable, without supervision and the
       assistance of others, to satisfy the need for
       nourishment, essential medical care, shelter or self-
       protection, so that it is probable that death,
       substantial bodily injury, or serious physical
debilitation or disease will result unless adequate
treatment is afforded."

2. By amending the definition of "Imminently dangerous to
self or others" to read:

"Imminently dangerous to self or others" means that,
without intervention, the person will likely become dangerous to
self or dangerous to others within the next forty-five days. A
qualified individual who acts pursuant to chapter end of life
option act is not imminently dangerous to self."

SECTION 6. Section 353-13.6, Hawaii Revised Statutes, is
amended by amending subsection (b) to read as follows:

"(b) For the purposes of this section:

"Danger of physical harm to others" means likely to cause
substantial physical or emotional injury to another, as
evidenced by an act, attempt, or threat occurring recently or
through a pattern of past behavior that has resulted in the
person being placed in a more restricted setting for the safety
of others in the facility.

"Danger of physical harm to self" means the person recently
has threatened or attempted suicide or serious bodily self
injury; or the person recently has behaved in such a manner as
to indicate that the person is unable, without supervision and
the assistance of others, to satisfy the need for nourishment,
essential medical care, or self-protection, so that it is
probable that death, substantial bodily injury, or serious
physical or mental debilitation or disease will result unless
adequate treatment is provided. A qualified individual who acts
pursuant to chapter end of life option act is not a danger to
cause physical harm to self."

SECTION 7. Section 431:10D-108, Hawaii Revised Statutes,
is amended by amending subsection (b) to read as follows:
"(b) No policy of life insurance shall be delivered or
issued for delivery in this State if it contains a provision
[which] that excludes or restricts liability for death caused in
a certain specified manner or occurring while the insured has a
specified status, except that the policy may contain provisions
excluding or restricting coverage as specified therein in event
of death under any one or more of the following circumstances:
(1) Death as a result directly or indirectly of war,
declared or undeclared, or of any act or hazard of
such war;
(2) Death as a result of aviation under conditions specified in the policy;
(3) Death as a result of a specified hazardous occupation or occupations;
(4) Death while the insured is a resident outside of the United States and Canada; or
(5) Death within two years from the date of issue of the policy as a result of suicide, while sane or insane[-]; provided that death by chapter end of life option act shall not be considered suicide for purposes of this section."

SECTION 8. Section 431:10H-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A policy may not be delivered or issued for delivery in this State as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(1) Preexisting conditions or diseases;
(2) Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;
(3) Alcoholism and drug addiction;
(4) Illness, treatment, or medical condition arising out of:
   (A) War or act of war, whether declared or undeclared;
   (B) Participation in a felony, riot, or insurrection;
   (C) Service in the armed forces or units auxiliary thereto;
   (D) Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; provided that actions taken pursuant to chapter end of life option act shall not be considered suicide or intentionally self-inflicted injury for purposes of this section; or
   (E) Aviation (this exclusion applies only to non-fare-paying passengers);
(5) Treatment provided in a government facility (unless required by law), services for which benefits are available under medicare or other governmental program (except medicaid), any state or federal workers' compensation, employer's liability, or occupational
disease law, or any motor vehicle insurance law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(6) Expenses for services or items available or paid under another long-term care insurance or health insurance policy; or

(7) In the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount."

SECTION 9. Section 707-700, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"End of life option" means actions taken pursuant to chapter by qualified individuals, physicians, mental health specialists, or pharmacists that results in the death, serious bodily injury, or suicide of the qualified individual. Nothing
in this chapter shall be construed to penalize the authorized
participants in the end of life option."

SECTION 10. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2017.

INTRODUCED BY: \[Signature\] (By request)

JAN 19 2017
Report Title:
End of Life Option Act

Description:
Establishes a person's ability to choose the End of Life Option when afflicted with a terminal illness; provides safeguards for the affected person; and repeals penalties for participating in the End of Life Option Act.

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