A BILL FOR AN ACT

RELATING TO HEALTH.

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

SECTION 1. The legislature finds that some states have enacted laws that establish a regulated process to allow their mentally competent adult residents who have a terminal illness with a confirmed prognosis of six or fewer months to live to voluntarily request and receive a prescription medication for self-administration so that they can die in a peaceful, humane manner. These laws, with labels such as "medical aid in dying" laws, "death with dignity" laws, or "end-of-life-options" laws, are based on the concept that the terminally ill person should have the ability to make reasoned end-of-life decisions and choose to end life in a peaceful, humane, and dignified manner or determine how much pain and suffering to endure.

The legislature also finds that Oregon's death with dignity act has been in effect since 1997. Similar laws are also in effect in California, Colorado, Vermont, and Washington. This act is modeled on the Oregon statute and includes safeguards to protect patients. These safeguards include confirmation by two...
providers of the patient's diagnosis, prognosis, mental
competence, and voluntariness of the request; multiple requests
by the patient: an oral request followed by a signed written
request that is witnessed by two people, one of whom must be
unrelated to the patient, and a subsequent oral restatement of
the request; and two waiting periods between the requests and
the writing of the prescription. At all times the patient
retains the right to rescind the request and is under no
obligation to fill the prescription or ingest the medication.

The legislature concludes that terminally ill residents of
the State should be able to determine their own medical
treatment at the end of their lives.

The purpose of this Act is to enact a medical aid in dying
act.

SECTION 2. The Hawaii Revised Statutes is amended by
adding a new chapter to be appropriately designated and to read
as follows:

"CHAPTER

MEDICAL AID IN DYING ACT

§ -1 Definitions. The following terms shall mean as
follows:
"Adult" means an individual who is eighteen years of age or older.

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

"Capable" means that in the opinion of a court or in the opinion of the patient's attending provider or consulting provider, psychiatrist, or psychologist, a patient has the ability to make and communicate health care decisions to health care providers.

"Consulting provider" means a physician licensed pursuant to chapter 453 who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease, but who has not previously assumed responsibility for the care of the patient with the attending provider.

"Counseling" means one or more consultations as necessary between a state-licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is
capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

"Department" means the department of health.

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

"Health care provider" 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 a qualified patient to request and obtain a prescription, which the qualified patient may self-administer to end the qualified patient's life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending provider of:

(1) The medical diagnosis;

(2) The prognosis;

(3) The potential risks associated with taking the medication to be prescribed;
(4) The probable result of taking the medication to be prescribed; and

(5) The feasible alternatives, including but not limited to comfort care, hospice care, and pain control.

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

"Patient" means a person who is under the care of a physician.

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

"Qualified patient" means a capable adult who is a resident of the State and has satisfied the requirements of this chapter in order to obtain a prescription for medication that the qualified patient may self-administer to end the qualified patient's life in a humane and dignified manner.

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.
§ -2 Written request for medication; initiated. (a) An adult who is capable, is a resident of the State, and has been determined by the attending provider and consulting provider to be suffering from a terminal disease, and who has voluntarily expressed the adult's wish to die, may make a written request for medication that the adult may self-administer for the purpose of ending the adult's life in a humane and dignified manner in accordance with this chapter.

(b) No person shall qualify under this chapter solely because of age or disability.

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

(b) One of the witnesses shall be a person who is not:

(1) A relative of the patient by blood, marriage, or adoption;
(2) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will, trust, or other legal instrument, or by operation of law; or

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

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

d) If the qualified patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility who has qualifications specified by the department of health by rule.

§ 4 Attending provider responsibilities. (a) The attending provider shall:

(1) Make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily;

(2) Request that the patient demonstrate residency pursuant to section -13;
(3) To ensure that the patient is making an informed decision, inform the patient of:
(A) The medical diagnosis;
(B) The prognosis;
(C) The potential risks associated with taking the medication to be prescribed;
(D) The probable result of taking the medication to be prescribed; and
(E) The feasible alternatives, including but not limited to comfort care, hospice care, and pain control;

(4) Refer the patient to a consulting provider for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;
(5) Refer the patient for counseling if appropriate;
(6) Recommend that the patient notify next of kin;
(7) Counsel the patient about the importance of having another person present when the qualified patient self-administers the medication prescribed pursuant to this chapter and of not self-administering the medication in a public place;
(8) Inform the patient that a qualified patient has an opportunity to rescind the request at any time and in any manner, and offer the qualified patient an opportunity to rescind at the time of the qualified patient's second oral request made pursuant to section -9;

(9) Verify, immediately prior to writing the prescription for medication under this chapter, that the qualified patient is making an informed decision;

(10) Fulfill the medical record documentation requirements of section -12;

(11) Ensure that all appropriate steps are carried out in accordance with this chapter prior to writing a prescription for medication to enable a qualified patient to end the qualified patient's life in a humane and dignified manner; and

(12) Either:

(A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort; provided that the attending provider
is authorized to dispense controlled substances pursuant to chapter 329, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rule; or

(B) With the qualified patient's written consent:

(i) Contact a pharmacist of the qualified patient's choice and inform the pharmacist of the prescription; and

(ii) Transmit the written prescription personally, by mail, or electronically to the pharmacist, who will dispense the medications to either the qualified patient, the attending provider, or an expressly identified agent of the qualified patient.

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

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

§ -6 Counseling referral. If, in the opinion of either
the attending provider or the consulting provider, a patient may
be suffering from a psychiatric or psychological disorder or
depression causing impaired judgment, the provider shall refer
the patient for counseling. No medication to end a patient's
life in a humane and dignified manner shall be prescribed until
the person performing the counseling determines that the patient
is not suffering from a psychiatric or psychological disorder or
depression causing impaired judgment.

§ -7 Informed decision. No qualified patient shall
receive a prescription for medication to end the qualified
patient's life in a humane and dignified manner unless the
qualified patient has made an informed decision. Immediately
prior to writing a prescription for medication under this
chapter, the attending provider shall verify that the qualified
patient is making an informed decision.
§ -8 Family notification. The attending provider shall recommend that the qualified patient notify the next of kin of the qualified patient's request for medication pursuant to this chapter. A qualified patient who declines or is unable to notify next of kin shall not have the qualified patient's request denied for that reason.

§ -9 Written and oral requests. To receive a prescription for medication that a qualified patient may self-administer to end the qualified patient's life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to the qualified patient's attending provider not less than fifteen days after making the initial oral request. At the time the qualified patient makes the second oral request, the attending provider shall offer the qualified patient an opportunity to rescind the request.

§ -10 Right to rescind request. A qualified patient may rescind the request at any time and in any manner without regard to the qualified patient's mental state. No prescription for medication under this chapter may be made available pursuant to section -4(a)(12) without the attending provider having
offered the qualified patient an opportunity to rescind the
request made pursuant to section -9.
§ -11 Waiting periods. Not less than fifteen days shall
elapse between the qualified patient's initial oral request and
the taking of steps to make available a prescription for
medication pursuant to section -4(a)(12). Not less than
forty-eight hours shall elapse between the qualified patient's
written request and the taking of steps to make available a
prescription for medication pursuant to section -4(a)(12).
§ -12 Medical record; documentation requirements. The
following shall be documented or filed in a qualified patient's
medical record:
(1) All oral requests by the qualified patient for
medication to end the qualified patient's life in a
humane and dignified manner;
(2) All written requests by the qualified patient for
medication to end the qualified patient's life in a
humane and dignified manner;
(3) The attending provider's diagnosis and prognosis and
determination that the qualified patient is capable,
acting voluntarily, and has made an informed decision;
(4) The consulting provider's diagnosis and prognosis and verification that the qualified patient is capable, acting voluntarily, and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if performed;

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

(7) A note by the attending provider indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

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

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

(2) Registration to vote in Hawaii;
(3) Evidence that the person owns or leases property in Hawaii; or

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

§ -14 Reporting requirements. (a) The department shall annually review a sample of records maintained pursuant to this chapter.

(b) The department shall require any health care provider, upon dispensing medication pursuant to this chapter, to file a copy of the dispensing record with the department.

(c) The department shall adopt rules to facilitate the collection of information regarding compliance with this chapter. Except as otherwise required by law, the information collected shall not be a public record and shall not be made available for inspection by the public. The department shall retain and exercise reasonable care in maintaining the information collected; provided that the information shall not be subject to any disposal or destruction of records requirements.
(d) The department shall generate and make available to
the public an annual statistical report of information collected
under subsection (c).

§ -15 Disposal of unused medication. A person who has
custody or control of any unused medication dispensed under this
chapter after the death of a qualified patient shall personally
deliver the unused medication 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.

§ -16 Effect on construction of wills or contracts. (a)
No provision in a will or contract, or other agreement, whether
written or oral, to the extent the provision would affect
whether a person may make or rescind a request for medication to
end the person's life in a humane and dignified manner, shall be
valid.

(b) No obligation owing under any currently existing
contract shall be conditioned or affected by the making or
rescinding of a request, by a person, for medication to end the
person's life in a humane and dignified manner.
§ -17 Insurance or annuity policies. The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication to end the person's life in a humane and dignified manner. A qualified patient's act of ingesting medication to end the qualified patient's life in a humane and dignified manner shall have no effect upon a life, health, or accident insurance or annuity policy.

§ -18 Construction of chapter. Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, murder, manslaughter, negligent homicide, or any other criminal conduct under the law.

§ -19 Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions. (a) Except as provided in section -20:
(1) No person shall be subject to civil or criminal liability or professional disciplinary action for participating or acting in good faith compliance with this chapter, including being present when a qualified patient takes the prescribed medication to end the qualified patient's life in a humane and dignified manner;

(2) No professional organization or association or health care provider may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this chapter;

(3) No request by a qualified patient for or provision by an attending provider of medication in good faith compliance with this chapter shall constitute neglect, harm, self-neglect, or abuse for any purpose of law or provide the sole basis for the appointment of a guardian or conservator;

(4) No health care provider shall be under any duty, whether by contract, by statute, or by any other legal
requirement, to participate in the provision to a qualified patient of medication to end the qualified patient's life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this chapter, and the patient transfers the patient's care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider; and

(5) No health care facility shall be subject to civil or criminal liability for acting in good faith compliance with this chapter including but not limited to the designation of a witness for a qualified patient who makes a written request when residing in a long-term care facility pursuant to section -3(d).

(b) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participating in actions covered by this chapter on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's
policy regarding participation in actions covered by this chapter. Nothing in this subsection shall prevent a health care provider from providing health care services to a patient that do not constitute participation in actions covered by this chapter.

(c) Subsection (a) notwithstanding, a health care provider may subject another health care provider to the following sanctions, if the sanctioning health care provider has notified the sanctioned health care provider prior to participation in actions covered by this chapter that it prohibits participation in actions covered by this chapter:

(1) Loss of privileges, loss of membership, or other sanction provided pursuant to the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned health care provider is a member of the sanctioning provider's medical staff and participates in actions covered by this chapter while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other health care provider;
(2) Termination of lease or other property contract or other nonmonetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned health care provider participates in actions covered by this chapter while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(3) Termination of contract or other nonmonetary remedies provided by contract if the sanctioned health care provider participates in actions covered by this chapter while acting in the course and scope of the sanctioned health care provider's capacity as an employee or independent contractor of the sanctioning health care provider; provided that nothing in this paragraph shall be construed to prevent:

(A) A health care provider from participating in actions covered by this chapter while acting outside the course and scope of the health care
provider's capacity as an employee or independent contractor; or

(B) A patient from contracting with the patient's attending provider and consulting provider to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(d) A health care provider that imposes sanctions pursuant to subsection (c) shall follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(e) For the purposes of this section:

"Notify" means a separate statement in writing to the health care provider specifically informing the health care provider prior to the health care provider's participation in actions covered by this chapter of the sanctioning health care provider's policy regarding participation in actions covered by this chapter.

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

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

(2) Providing information about this chapter to a patient upon the request of the patient;

(3) Providing a patient, upon the request of the patient, with a referral to another physician; or

(4) A patient contracting with the patient's attending provider and consulting provider to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(f) Action taken pursuant to sections -4 to -6 shall not be the sole basis for disciplinary action under section 453-8 or section 457-12.

(g) This chapter shall not be construed to allow a lower standard of care for patients in the community where the patient is treated or in a similar community.
§ 20 Prohibited acts; penalties. (a) A person who without the authorization of a qualified patient intentionally alters or forges a request for medication or conceals or destroys a rescission of that request to cause the patient's death shall be guilty of a class A felony.

(b) A person who coerces or exerts undue influence on a qualified patient to request medication for the purpose of ending the patient's life, or to destroy a rescission of the request, shall be guilty of a class A felony.

(c) A person who, without authorization of a qualified patient, intentionally alters, forges, conceals, or destroys an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting a qualified patient's desires and interests, with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration that hastens the death of the qualified patient, shall be guilty of a class A felony.

(d) Except as provided in subsection (c), it shall be a misdemeanor for a person without authorization of a qualified patient to intentionally alter, forge, conceal, or destroy an
instrument, the reinstatement or revocation of an instrument, or
any other evidence or document reflecting the principal's
desires and interests with the intent or effect of affecting a
health care decision.

(e) Nothing in this section shall limit any liability for
civil damages resulting from any negligent conduct or
intentional misconduct by any person.

(f) The penalties in this chapter are cumulative and do
not preclude criminal penalties pursuant to other applicable
state law.

§ -21 Claims by governmental entity for costs incurred.
Any government entity that incurs costs resulting from a person
terminating the person's life pursuant to this chapter in a
public place shall have a claim against the estate of the person
to recover costs and reasonable attorneys' fees related to
enforcing the claim.

§ -22 Severability. Any provision of this chapter that
is held invalid as to any person or circumstance shall not
affect the application of any other provision of this chapter
that can be given full effect without the invalid section or
application.
§ -23 Form of the request. A request for a medication as authorized by this chapter shall be in substantially the following form:

"REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

I, ___________________, am an adult of sound mind.

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

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending provider prescribe medication that I may self-administer to end my life in a humane and dignified manner.

INITIAL ONE:

_______ I have informed 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 rescind this request at any time.

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

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

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) Signed this request in our presence;
(c) Appears to be of sound mind and not under duress or to have been induced by fraud, or subjected to undue influence when signing the request; and
(d) Is not a patient for whom either of us is the attending provider.

Witness 1 Date

Witness 2 Date

NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a long-term care facility, one of the witnesses shall be an individual designated by the facility who has qualifications specified by the Department of Health by rule."

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[; provided that this subsection shall not apply to actions taken under chapter____]."
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[†]; provided that this subparagraph shall not apply to actions taken under chapter____.
SECTION 5. Section 707-701.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person[—]; provided that this section shall not apply to actions taken under chapter_____."

SECTION 6. Section 707-702, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

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

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

(b) The person intentionally causes another person to commit suicide[—];

provided that this section shall not apply to actions taken under chapter_____."

SECTION 7. The department of health shall submit a report that includes but is not limited to:

(1) An annual statistical report of the information collected pursuant to section -14(d), Hawaii Revised Statutes;
(2) An annual analysis of the implementation of the medical aid in dying act under chapter 1913, Hawaii Revised Statutes, including any implementation problems; and

(3) Any proposed legislation, to the legislature no later than twenty days prior to the convening of each regular session.

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

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 11. This Act shall take effect upon its approval.
Report Title:
Health; Medical Aid in Dying

Description:
Establishes a medical aid in dying act that establishes a regulatory process under which an adult resident of the State with a medically confirmed terminal disease may obtain a prescription for medication to be self-administered to end the patient’s life. (SD2)

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