A BILL FOR AN ACT

RELATING TO AID IN DYING.

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

SECTION 1. This Act shall be known and may be cited as the "Hawaii Patient Choice at End of Life Act of 2017".

SECTION 2. The legislature acknowledges that adult, terminally ill individuals have a fundamental right to determine their own medical treatment options as they near the end of life. Advances in technology are such that the process of dying can be extended even when no cure or likelihood of successful medical intervention exists. These circumstances can result in a terminally ill patient undergoing unremitting pain, discomfort, and an irreversible reduction in the patient's quality of life in his or her final days.

The legislature finds that patients in Hawaii who are terminally ill and mentally capable have limited options to end their suffering if the dying process becomes unbearable. Palliative care, voluntarily stopping eating and drinking, or stopping artificial ventilation or other life-sustaining therapy to advance the dying process are all options that a dying
individual may choose. However, physicians do not always offer these options to patients and, more importantly, these options do not always result in a quick or peaceful death. If it were explicitly authorized, some individuals would, for peace of mind, choose medical aid in dying even if they ultimately choose not to ingest the medication.

The legislature further finds that "medical aid in dying" describes a medical practice defined by established standards of care. It is well-recognized that medical aid in dying can ease the unnecessary suffering of individuals by providing a measure of control over the progression of a terminal illness. Medical aid in dying can provide a safe, compassionate alternative to what terminally ill patients describe as unbearable pain, suffering, and loss of autonomy in their final days.

Medical aid in dying has been the law in Oregon for twenty years. Since implementation, the quality of end-of-life care, pain management, and the use of hospice have all greatly improved. Data from Oregon also demonstrates that there have been no abuses of the law and, in contrast to the fears of opponents, the elderly, disabled, and uninsured have not been negatively impacted by the use of aid in dying. The
availability of medical aid in dying provides comfort to
terminally ill individuals even when they ultimately choose not
to self-administer the medication.

The legislature finds that a growing body of scholarly
research on medical aid in dying practices demonstrates the
utility and safety of the practice of upholding an individual's
right to self-determination. The legislature recognizes that
six states now authorize medical aid in dying, including Oregon,
Washington, Montana, Vermont, California, and Colorado, and over
twenty states are currently considering legislation to authorize
the practice. Therefore, it is the intent of the legislature
to:

(1) Ensure that mentally capable, terminally ill adults in
Hawaii who choose to do so are able to take advantage
of medical aid in dying medication to facilitate a
peaceful death; and

(2) Ensure that physicians who assist patients in
obtaining aid in dying medication are not subject to
civil or criminal liability for participating in good
faith compliance with this Act.
SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

HAWAII PATIENT CHOICE AT END OF LIFE 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.

"Attending physician" means a person who:

(1) Is authorized to practice medicine under chapter 453;

(2) Has primary responsibility for the patient's health care and treatment of the patient's terminal illness; and

(3) Routinely provides medical care to patients with advanced and terminal illnesses in the normal course of the person's medical practice; provided that such practice is not solely limited to providing medical aid in dying.

"Capacity to make an informed health care decision" means a determination by an attending physician that an individual is
able to understand the significant benefits, risks, and alternatives to proposed health care, and make and communicate an informed health care decision.

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

"Health care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

"Informed health care decision" means a decision by an individual to request a prescription for medical aid in dying based on an understanding and acknowledgment of the relevant facts, and a decision that is made after being fully informed by the individual's attending physician of:

1. The individual's medical diagnosis;
2. The individual's prognosis;
3. The potential risks associated with taking the medication to be prescribed;
4. The probable result of taking the medication to be prescribed;
(5) The possibility that the individual may choose not to
obtain the medication, or may obtain the medication
but decide not to take it; and

(6) The feasible alternatives or additional treatment
opportunities available to the individual, including
hospice and palliative care.

"Medical aid in dying" means the medical practice of an
attending physician prescribing medication to a terminally ill
adult with the capacity to make an informed health care decision
to self-administer the medication to bring about a peaceful
death if they so choose.

"Self-administration" means a terminally ill adult's
affirmative, conscious, and physical act of administering the
aid in dying drug to bring about his or her own death.

"Terminally ill" means the final stage of an incurable and
irreversible medical condition that has been medically confirmed
and will, within reasonable medical judgment, result in death
within six months.

§ -2 Medical aid in dying; authorized. A terminally ill
adult with the capacity to make an informed health care decision
may request a prescription for medical aid in dying from his or
her attending physician and may obtain medication that the
individual may choose to self-administer to bring about a
peaceful death. An adult's capacity to make an informed health
care decision shall be determined by the adult's attending
physician.

§-3 Standard of care. (a) Medical aid in dying and
information related to medical aid in dying shall be provided
consistent with this chapter and the current standard of care
for medical aid in dying.

(b) No health care provider or health care facility may
intentionally mislead an individual, by affirmative statement or
by omission, regarding the existence of medical aid in dying as
an authorized medical practice.

(c) No health care provider, health care facility,
professional association, or professional organization shall
punish, retaliate, or otherwise discipline another health care
provider for refusing to violate subsection (b).

§-4 Applicability; relationship to other laws. (a)
Nothing in this chapter shall be construed to authorize a health
care provider to end an individual's life by euthanasia.
(b) This chapter shall not limit or otherwise affect the provision, administration, or receipt of palliative sedation consistent with the current medical standard of care.

(c) Medical aid in dying that occurs in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, or homicide under the law.

(d) Notwithstanding section 841-3 to the contrary, an individual's good faith use of medication prescribed for medical aid in dying shall not, by itself, trigger a coroner's or deputy coroner's duty to perform an inquest.

(e) The cause of death listed on death certificates of individuals who avail themselves of medical aid in dying shall be the individual's underlying terminal illness.

(f) Seeking or using medical aid in dying shall not affect in any manner any contract, will, life insurance, health insurance, accident insurance, annuity, or other agreement.

(g) A request by an individual for, or provision by an attending physician of, aid in dying medication in good faith compliance with this chapter does not constitute neglect or elder abuse for any purpose of law or provide the basis for the appointment of a guardian or conservator.
(h) An individual who possesses or self-administers aid in dying medication consistent with this chapter shall not, solely for such reasons, be considered dangerous to self under section 334-1 or a person suffering from serious physical harm under section 663-1.6.

§ -5 Health care providers. (a) Health care providers and individuals are not subject to civil or criminal liability for participating in medical aid in dying in good faith compliance with this chapter, including an individual who is present when a terminally ill adult with the capacity to make an informed health care decision self-administers the prescribed aid in dying medication.

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

(c) If a health care provider is unable or unwilling to comply with the request of a terminally ill adult with the capacity to make an informed health care decision to participate
in medical aid in dying, the health care provider shall cooperate in the transfer of the individual's care to a participating provider so that the individual's request can be evaluated in a neutral and unbiased manner. If the individual transfers care to a new health care provider, the prior health care provider shall immediately transfer a copy of the individual's relevant medical records to the new health care provider.

§ 6 Prohibited acts; penalties. Purposely or knowingly coercing or exerting undue influence on an individual to request medication for the purpose of ending the individual's life through medical aid in dying, or to conceal a rescission of a request, shall be punishable as a class felony."

SECTION 4. Chapter 461, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§461- Compliance with medical aid in dying law.
Notwithstanding any law to the contrary, nothing in this chapter shall be deemed to prohibit a registered pharmacist from dispensing medications to a terminally ill adult with the capacity to make an informed health care decision or the adult's
attending physician for the purpose of ending the terminally ill adult's life in a peaceful manner, as provided in chapter _____."

SECTION 5. 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 medical aid in dying under chapter shall not be affected by this section."

SECTION 6. 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 medical aid in dying under chapter shall not be considered suicide for purposes of this section."

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.
SECTION 8. 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. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

INTRODUCED BY: [Signatures]
Report Title:
Medical Aid in Dying; Patient Choice

Description:
Authorizes a terminally ill adult with the capacity to make an informed health care decision to request a prescription for aid in dying medication from their attending physician to facilitate a peaceful death. Establishes that an attending physician determines a terminally ill adult's capacity to make an informed health care decision. Establishes that medical aid in dying does not constitute euthanasia, suicide, homicide, elder abuse or neglect, or cause a person to be considered a danger to self. Protects physicians who assist patients in obtaining aid in dying medication from civil or criminal liability. Makes it a felony to coerce an individual to request medication for the purpose of ending his or her life or to conceal a rescission of such request.

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