

JAN 20 2017

A BILL FOR AN ACT

RELATING TO AID IN DYING.

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

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

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

12 The legislature finds that patients in Hawaii who are
13 terminally ill and mentally capable have limited options to end
14 their suffering if the dying process becomes unbearable.
15 Palliative care, voluntarily stopping eating and drinking, or
16 stopping artificial ventilation or other life-sustaining therapy
17 to advance the dying process are all options that a dying



1 individual may choose. However, physicians do not always offer
2 these options to patients and, more importantly, these options
3 do not always result in a quick or peaceful death. If it were
4 explicitly authorized, some individuals would, for peace of
5 mind, choose medical aid in dying even if they ultimately choose
6 not to ingest the medication.

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

15 Medical aid in dying has been the law in Oregon for twenty
16 years. Since implementation, the quality of end-of-life care,
17 pain management, and the use of hospice have all greatly
18 improved. Data from Oregon also demonstrates that there have
19 been no abuses of the law and, in contrast to the fears of
20 opponents, the elderly, disabled, and uninsured have not been
21 negatively impacted by the use of aid in dying. The



1 availability of medical aid in dying provides comfort to
2 terminally ill individuals even when they ultimately choose not
3 to self-administer the medication.

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

- 13 (1) Ensure that mentally capable, terminally ill adults in
14 Hawaii who choose to do so are able to take advantage
15 of medical aid in dying medication to facilitate a
16 peaceful death; and
- 17 (2) Ensure that physicians who assist patients in
18 obtaining aid in dying medication are not subject to
19 civil or criminal liability for participating in good
20 faith compliance with this Act.



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

4 "CHAPTER

5 HAWAII PATIENT CHOICE AT END OF LIFE ACT

6 § -1 Definitions. As used in this chapter, unless the
7 context clearly requires otherwise:

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

10 "Attending physician" means a person who:

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

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

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

20 "Capacity to make an informed health care decision" means a
21 determination by an attending physician that an individual is



1 able to understand the significant benefits, risks, and
2 alternatives to proposed health care, and make and communicate
3 an informed health care decision.

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

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

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

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



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

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

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

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

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

19 § -2 **Medical aid in dying; authorized.** A terminally ill
20 adult with the capacity to make an informed health care decision
21 may request a prescription for medical aid in dying from his or



1 her attending physician and may obtain medication that the
2 individual may choose to self-administer to bring about a
3 peaceful death. An adult's capacity to make an informed health
4 care decision shall be determined by the adult's attending
5 physician.

6 § -3 **Standard of care.** (a) Medical aid in dying and
7 information related to medical aid in dying shall be provided
8 consistent with this chapter and the current standard of care
9 for medical aid in dying.

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

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

18 § -4 **Applicability; relationship to other laws.** (a)
19 Nothing in this chapter shall be construed to authorize a health
20 care provider to end an individual's life by euthanasia.



1 (b) This chapter shall not limit or otherwise affect the
2 provision, administration, or receipt of palliative sedation
3 consistent with the current medical standard of care.

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

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

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

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

17 (g) A request by an individual for, or provision by an
18 attending physician of, aid in dying medication in good faith
19 compliance with this chapter does not constitute neglect or
20 elder abuse for any purpose of law or provide the basis for the
21 appointment of a guardian or conservator.



1 (h) An individual who possesses or self-administers aid in
2 dying medication consistent with this chapter shall not, solely
3 for such reasons, be considered dangerous to self under section
4 334-1 or a person suffering from serious physical harm under
5 section 663-1.6.

6 § -5 **Health care providers.** (a) Health care providers
7 and individuals are not subject to civil or criminal liability
8 for participating in medical aid in dying in good faith
9 compliance with this chapter, including an individual who is
10 present when a terminally ill adult with the capacity to make an
11 informed health care decision self-administers the prescribed
12 aid in dying medication.

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

19 (c) If a health care provider is unable or unwilling to
20 comply with the request of a terminally ill adult with the
21 capacity to make an informed health care decision to participate



1 in medical aid in dying, the health care provider shall
 2 cooperate in the transfer of the individual's care to a
 3 participating provider so that the individual's request can be
 4 evaluated in a neutral and unbiased manner. If the individual
 5 transfers care to a new health care provider, the prior health
 6 care provider shall immediately transfer a copy of the
 7 individual's relevant medical records to the new health care
 8 provider.

9 § -6 **Prohibited acts; penalties.** Purposely or knowingly
 10 coercing or exerting undue influence on an individual to request
 11 medication for the purpose of ending the individual's life
 12 through medical aid in dying, or to conceal a rescission of a
 13 request, shall be punishable as a class felony."

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

17 "§461- Compliance with medical aid in dying law.
 18 Notwithstanding any law to the contrary, nothing in this chapter
 19 shall be deemed to prohibit a registered pharmacist from
 20 dispensing medications to a terminally ill adult with the
 21 capacity to make an informed health care decision or the adult's



1 attending physician for the purpose of ending the terminally ill
2 adult's life in a peaceful manner, as provided in chapter
3 _____."

4 SECTION 5. Section 327E-13, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) This chapter shall not authorize mercy killing,
7 assisted suicide, euthanasia, or the provision, withholding, or
8 withdrawal of health care, to the extent prohibited by other
9 statutes of this State[-]; provided that medical aid in dying
10 under chapter _____ shall not be affected by this section."

11 SECTION 6. Section 431:10D-108, Hawaii Revised Statutes,
12 is amended by amending subsection (b) to read as follows:

13 "(b) No policy of life insurance shall be delivered or
14 issued for delivery in this State if it contains a provision
15 [~~which~~] that excludes or restricts liability for death caused in
16 a certain specified manner or occurring while the insured has a
17 specified status, except that the policy may contain provisions
18 excluding or restricting coverage as specified therein in event
19 of death under any one or more of the following circumstances:



- 1 (1) Death as a result directly or indirectly of war,
2 declared or undeclared, or of any act or hazard of
3 such war;
- 4 (2) Death as a result of aviation under conditions
5 specified in the policy;
- 6 (3) Death as a result of a specified hazardous occupation
7 or occupations;
- 8 (4) Death while the insured is a resident outside of the
9 United States and Canada; or
- 10 (5) Death within two years from the date of issue of the
11 policy as a result of suicide, while sane or
12 insane[-]; provided that medical aid in dying under
13 chapter shall not be considered suicide for
14 purposes of this section."

15 SECTION 7. If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.



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

4 SECTION 9. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect upon its approval.
7

INTRODUCED BY:

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S.B. NO. 357

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.

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

