

JAN 25 2017

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The legislature finds that some states have
2 enacted laws that allow their mentally competent adult residents
3 who have a terminal illness with a confirmed prognosis of six or
4 fewer months to live to voluntarily request and receive a
5 prescription medication so that they can die in a peaceful,
6 humane manner. These laws, labeled "death with dignity laws,"
7 are based on the concept that the terminally ill person should
8 have the ability to make reasoned end-of-life decisions and
9 determine how much pain and suffering to endure.

10 The legislature also finds that Oregon's death with dignity
11 act has been in effect since 1997. Similar laws are also in
12 effect in California, Colorado, Vermont, and Washington. This
13 act is modeled on the Oregon statute and includes safeguards to
14 protect patients from misuse. These safeguards include
15 confirmation by two physicians of the patient's diagnosis,
16 prognosis, mental competence, and voluntariness of the request;
17 multiple requests by the patient: an oral request followed by a



1 signed written request that is witnessed by two people, one of
2 whom must be unrelated to the patient, and a subsequent oral
3 restatement of the request; and two waiting periods between the
4 requests and the writing of the prescription. At all times the
5 patient retains the right to rescind the request and is under no
6 obligation to fill the prescription or ingest the medication.

7 The legislature concludes that terminally ill residents of
8 the State have a right to determine their own medical treatment
9 at the end of their lives.

10 The purpose of this Act is to enact a death with dignity
11 act.

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

15 **"CHAPTER**

16 **DEATH WITH DIGNITY ACT**

17 § -1 **Definitions.** The following terms shall mean as
18 follows:

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



1 "Attending physician" means the physician who has primary
2 responsibility for the care of the patient and treatment of the
3 patient's terminal disease.

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

9 "Consulting physician" means a physician who is qualified
10 by specialty or experience to make a professional diagnosis and
11 prognosis regarding the patient's disease.

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

17 "Department" means the department of health.

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



1 course of business or practice of a profession, and includes a
2 health care facility.

3 "Informed decision" means a decision by a qualified
4 patient, to request and obtain a prescription to end the
5 qualified patient's life in a humane and dignified manner, that
6 is based on an appreciation of the relevant facts and after
7 being fully informed by the attending physician of:

- 8 (1) The medical diagnosis;
- 9 (2) The prognosis;
- 10 (3) The potential risks associated with taking the
11 medication to be prescribed;
- 12 (4) The probable result of taking the medication to be
13 prescribed; and
- 14 (5) The feasible alternatives, including but not limited
15 to comfort care, hospice care, and pain control.

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

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



1 "Physician" means a doctor of medicine or osteopathy
2 licensed to practice medicine by the Hawaii medical board.

3 "Qualified patient" means a capable adult who is a resident
4 of the State and has satisfied the requirements of this chapter
5 in order to obtain a prescription for medication to end the
6 qualified patient's life in a humane and dignified manner.

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

10 § -2 **Written request for medication; initiated.** (a) An
11 adult who is capable, is a resident of the State, and has been
12 determined by the attending physician and consulting physician
13 to be suffering from a terminal disease, and who has voluntarily
14 expressed the adult's wish to die, may make a written request
15 for medication for the purpose of ending the adult's life in a
16 humane and dignified manner in accordance with this chapter.

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

19 § -3 **Form of the written request.** (a) A valid request
20 for medication under this chapter shall be in substantially the
21 form described in section -22, signed and dated by the



1 patient and witnessed by at least two individuals who, in the
2 presence of the patient, attest that to the best of their
3 knowledge and belief the patient is capable, acting voluntarily,
4 and is not being coerced to sign the request.

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

6 (1) A relative of the patient by blood, marriage, or
7 adoption;

8 (2) A person who at the time the request is signed would
9 be entitled to any portion of the estate of the
10 qualified patient upon death under any will or by
11 operation of law; or

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

15 (c) The patient's attending physician at the time the
16 request is signed shall not be a witness.

17 (d) If the patient is a patient in a long term care
18 facility at the time the written request is made, one of the
19 witnesses shall be an individual designated by the facility and
20 having qualifications specified by the department of human
21 services by rule.



1 § -4 **Attending physician responsibilities.** (a) The
2 attending physician shall:

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

6 (2) Request that the patient demonstrate residency;

7 (3) To ensure that the patient is making an informed
8 decision, inform the patient of:

9 (A) The medical diagnosis;

10 (B) The prognosis;

11 (C) The potential risks associated with taking the
12 medication to be prescribed;

13 (D) The probable result of taking the medication to
14 be prescribed; and

15 (E) The feasible alternatives, including but not
16 limited to comfort care, hospice care, and pain
17 control;

18 (4) Refer the patient to a consulting physician for
19 medical confirmation of the diagnosis, and for a
20 determination that the patient is capable and acting
21 voluntarily;



- 1 (5) Refer the patient for counseling if appropriate;
- 2 (6) Recommend that the patient notify next of kin;
- 3 (7) Counsel the patient about the importance of having
- 4 another person present when the patient takes the
- 5 medication prescribed pursuant to this chapter and of
- 6 not taking the medication in a public place;
- 7 (8) Inform the patient that the patient has an opportunity
- 8 to rescind the request at any time and in any manner,
- 9 and offer the patient an opportunity to rescind at the
- 10 time of the patient's second oral request made
- 11 pursuant to section -9;
- 12 (9) Verify, immediately prior to writing the prescription
- 13 for medication under this chapter, that the patient is
- 14 making an informed decision;
- 15 (10) Fulfill the medical record documentation requirements
- 16 of section -12;
- 17 (11) Ensure that all appropriate steps are carried out in
- 18 accordance with this chapter prior to writing a
- 19 prescription for medication to enable a qualified
- 20 patient to end the qualified patient's life in a
- 21 humane and dignified manner; and



- 1 (12) Either:
- 2 (A) Dispense medications directly, including
- 3 ancillary medications intended to facilitate the
- 4 desired effect to minimize the patient's
- 5 discomfort; provided that the attending physician
- 6 is registered as a dispensing physician with the
- 7 Hawaii medical board, has a current Drug
- 8 Enforcement Administration certificate, and
- 9 complies with any applicable administrative rule;
- 10 or
- 11 (B) With the patient's written consent:
- 12 (i) Contact a pharmacist of the patient's choice
- 13 and inform the pharmacist of the
- 14 prescription; and
- 15 (ii) Transmit the written prescription
- 16 personally, by mail, or electronically to
- 17 the pharmacist, who will dispense the
- 18 medications to either the patient, the
- 19 attending physician, or an expressly
- 20 identified agent of the patient.



1 (b) Notwithstanding any other provision of law, the
2 attending physician may sign the patient's death certificate.

3 § -5 **Consulting physician confirmation.** Before a
4 patient is qualified under this chapter, a consulting physician
5 shall examine the patient and the patient's relevant medical
6 records and confirm, in writing, the attending physician's
7 diagnosis that the patient is suffering from a terminal disease,
8 and verify that the patient is capable, is acting voluntarily,
9 and has made an informed decision.

10 § -6 **Counseling referral.** If, in the opinion of the
11 attending physician or the consulting physician, a patient may
12 be suffering from a psychiatric or psychological disorder or
13 depression causing impaired judgment, either physician shall
14 refer the patient for counseling. No medication to end a
15 patient's life in a humane and dignified manner shall be
16 prescribed until the person performing the counseling determines
17 that the patient is not suffering from a psychiatric or
18 psychological disorder or depression causing impaired judgment.

19 § -7 **Informed decision.** No person shall receive a
20 prescription for medication to end the person's life in a humane
21 and dignified manner unless the person has made an informed



1 decision. Immediately prior to writing a prescription for
2 medication under this chapter, the attending physician shall
3 verify that the patient is making an informed decision.

4 § **-8 Family notification.** The attending physician shall
5 recommend that the patient notify the next of kin of the
6 patient's request for medication pursuant to this chapter. A
7 patient who declines or is unable to notify next of kin shall
8 not have the patient's request denied for that reason.

9 § **-9 Written and oral requests.** To receive a
10 prescription for medication to end one's life in a humane and
11 dignified manner, a qualified patient shall have made an oral
12 request and a written request, and reiterate the oral request to
13 the qualified patient's attending physician not less than
14 fifteen days after making the initial oral request. At the time
15 the qualified patient makes the second oral request, the
16 attending physician shall offer the patient an opportunity to
17 rescind the request.

18 § **-10 Right to rescind request.** A patient may rescind
19 the request at any time and in any manner without regard to the
20 patient's mental state. No prescription for medication under
21 this chapter may be written without the attending physician



1 having offered the qualified patient an opportunity to rescind
2 the request made pursuant to section -9.

3 § -11 **Waiting periods.** Not less than fifteen days shall
4 elapse between the patient's initial oral request and the
5 writing of a prescription under this chapter. Not less than
6 forty-eight hours shall elapse between the patient's written
7 request and the writing of a prescription under this chapter.

8 § -12 **Medical record; documentation requirements.** The
9 following shall be documented or filed in the patient's medical
10 record:

- 11 (1) All oral requests by a patient for medication to end
12 the patient's life in a humane and dignified manner;
- 13 (2) All written requests by a patient for medication to
14 end the patient's life in a humane and dignified
15 manner;
- 16 (3) The attending physician's diagnosis and prognosis,
17 determination that the patient is capable, acting
18 voluntarily, and has made an informed decision;
- 19 (4) The consulting physician's diagnosis and prognosis,
20 and verification that the patient is capable, acting
21 voluntarily, and has made an informed decision;



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

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

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

11 § -13 **Residency requirement.** Only requests made by
12 residents of this State under this chapter shall be granted.
13 Factors demonstrating state residency include but are not
14 limited to:

15 (1) Possession of a Hawaii driver license;

16 (2) Registration to vote in Hawaii;

17 (3) Evidence that the person owns or leases property in
18 Hawaii; or

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



1 § **-14 Reporting requirements.** (a) The department shall
2 annually review a sample of records maintained pursuant to this
3 chapter.

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

7 (c) The department shall adopt rules to facilitate the
8 collection of information regarding compliance with this
9 chapter. Except as otherwise required by law, the information
10 collected shall not be a public record and may not be made
11 available for inspection by the public.

12 (d) The department shall generate and make available to
13 the public an annual statistical report of information collected
14 under subsection (c).

15 § **-15 Effect on construction of wills, contracts, and**
16 **statutes.** (a) No provision in a contract, will, or other
17 agreement, whether written or oral, to the extent the provision
18 would affect whether a person may make or rescind a request for
19 medication to end the person's life in a humane and dignified
20 manner, shall be valid.



1 (b) No obligation owing under any currently existing
2 contract shall be conditioned or affected by the making or
3 rescinding of a request, by a person, for medication to end the
4 person's life in a humane and dignified manner.

5 § -16 **Insurance or annuity policies.** The sale,
6 procurement, or issuance of any life, health, or accident
7 insurance or annuity policy or the rate charged for any policy
8 shall not be conditioned upon or affected by the making or
9 rescinding of a request, by a person, for medication to end the
10 person's life in a humane and dignified manner. Neither shall a
11 qualified patient's act of ingesting medication to end the
12 qualified patient's life in a humane and dignified manner have
13 an effect upon a life, health, or accident insurance or annuity
14 policy.

15 § -17 **Construction of chapter.** Nothing in this chapter
16 shall be construed to authorize a physician or any other person
17 to end a patient's life by lethal injection, mercy killing, or
18 active euthanasia. Actions taken in accordance with this
19 chapter shall not, for any purpose, constitute suicide, assisted
20 suicide, mercy killing or homicide, under the law.



1 § -18 Immunities; basis for prohibiting health care
2 provider from participation; notification; permissible
3 sanctions. (a) Except as provided in section -19:

4 (1) No person shall be subject to civil or criminal
5 liability or professional disciplinary action for
6 participating in good faith compliance with this
7 chapter, including being present when a qualified
8 patient takes the prescribed medication to end the
9 qualified patient's life in a humane and dignified
10 manner;

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

17 (3) No request by a patient for or provision by an
18 attending physician of medication in good faith
19 compliance with this chapter shall constitute neglect
20 for any purpose of law or provide the sole basis for
21 the appointment of a guardian or conservator; and



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

13 (b) Notwithstanding any other provision of law, a health
14 care provider may prohibit another health care provider from
15 participating in actions covered by this chapter on the premises
16 of the prohibiting provider if the prohibiting provider has
17 notified the health care provider of the prohibiting provider's
18 policy regarding participation in actions covered by this
19 chapter. Nothing in this subsection shall prevent a health care
20 provider from providing health care services to a patient that



1 do not constitute participation in actions covered by this
2 chapter.

3 (c) Notwithstanding subsection (a)(1) to (a)(4), a health
4 care provider may subject another health care provider to the
5 following sanctions if the sanctioning health care provider has
6 notified the sanctioned provider prior to participation in
7 actions covered by this chapter that it prohibits the
8 participation:

9 (1) Loss of privileges, loss of membership, or other
10 sanction provided pursuant to the medical staff
11 bylaws, policies, and procedures of the sanctioning
12 health care provider if the sanctioned provider is a
13 member of the sanctioning provider's medical staff and
14 participates in actions covered by this chapter while
15 on the health care facility premises of the
16 sanctioning health care provider, but not including
17 the private medical office of a physician or other
18 provider;

19 (2) Termination of lease or other property contract or
20 other nonmonetary remedies provided by lease contract,
21 not including loss or restriction of medical staff



1 privileges or exclusion from a provider panel, if the
2 sanctioned provider participates in actions covered by
3 this chapter while on the premises of the sanctioning
4 health care provider or on property that is owned by
5 or under the direct control of the sanctioning health
6 care provider; or

- 7 (3) Termination of contract or other nonmonetary remedies
8 provided by contract if the sanctioned provider
9 participates in actions covered by this chapter while
10 acting in the course and scope of the sanctioned
11 provider's capacity as an employee or independent
12 contractor of the sanctioning health care provider.

13 Nothing in this paragraph shall be construed to
14 prevent:

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

- 20 (B) A patient from contracting with the patient's
21 attending physician and consulting physician to



1 act outside the course and scope of the
2 provider's capacity as an employee or independent
3 contractor of the sanctioning health care
4 provider.

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

10 (e) For the purposes of this section:

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

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



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

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

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

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

13 (f) Action taken pursuant to sections -4 to -6 shall
14 not be the sole basis for disciplinary action under section 453-
15 8.

16 (g) This chapter shall not be construed to allow a lower
17 standard of care for patients in the community where the patient
18 is treated or a similar community.

19 § -19 **Prohibited acts; penalties.** (a) A person who
20 without authorization of the patient wilfully alters or forges a
21 request for medication or conceals or destroys a rescission of



1 that request with the intent or effect of causing the patient's
2 death shall be guilty of a class A felony.

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

7 (c) It shall be a class A felony for a person without
8 authorization of the principal to wilfully alter, forge,
9 conceal, or destroy an instrument, the reinstatement or
10 revocation of an instrument, or any other evidence or document
11 reflecting the principal's desires and interests, with the
12 intent and effect of causing a withholding or withdrawal of
13 life-sustaining procedures or of artificially administered
14 nutrition and hydration that hastens the death of the principal.

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



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

4 (f) The penalties in this chapter are cumulative and do
5 not preclude criminal penalties applicable under other law for
6 conduct which is inconsistent with this chapter.

7 § -20 **Claims by governmental entity for costs incurred.**

8 Any governmental entity that incurs costs resulting from a
9 person terminating the person's life pursuant to this chapter in
10 a public place shall have a claim against the estate of the
11 person to recover costs and reasonable attorney fees related to
12 enforcing the claim.

13 § -21 **Severability.** Any section of this chapter that is
14 held invalid as to any person or circumstance shall not affect
15 the application of any other section of this chapter that can be
16 given full effect without the invalid section or application.

17 § -22 **Form of the request.** A request for a medication
18 as authorized by this chapter shall be in substantially the
19 following form:

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



1 I, _____, am an adult of sound mind.

2 I am suffering from _____, which my attending
3 physician has determined is a terminal disease and that has been
4 medically confirmed by a consulting physician.

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

9 I request that my attending physician prescribe medication
10 that will end my life in a humane and dignified manner.

11 INITIAL ONE:

12 _____ I have informed my family of my decision and
13 taken their opinions into consideration.

14 _____ I have decided not to inform my family of my
15 decision.

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

17 I understand that I have the right to rescind this request
18 at any time.

19 I understand the full import of this request and I expect
20 to die when I take the medication to be prescribed. I further
21 understand that although most deaths occur within three hours,



1 my death may take longer and my physician has counseled me about
2 this possibility.

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

5 Signed: _____

6 Dated: _____

7 DECLARATION OF WITNESSES

8 We declare that the person signing this request:

- 9 (a) Is personally known to us or has provided proof of
- 10 identity;
- 11 (b) Signed this request in our presence;
- 12 (c) Appears to be of sound mind and not under duress or to
- 13 have been induced by fraud, or subjected to undue
- 14 influence when signing the request; and
- 15 (d) Is not a patient for whom either of us is the
- 16 attending physician.

17 _____ Witness 1 Date _____

18 _____ Witness 2 Date _____

19 NOTE: One witness shall not be a relative (by blood,
20 marriage, or adoption) of the person signing this request, shall
21 not be entitled to any portion of the person's estate upon death



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1 and shall not own, operate, or be employed at a health care
2 facility where the person is a patient or resident. If the
3 patient is an inpatient at a long-term care facility, one of the
4 witnesses shall be an individual designated by the facility."

5 SECTION 3. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. This Act shall take effect upon its approval.

9

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S.B. NO. 1129

Report Title:

Health; Death with Dignity

Description:

Establishes a death with dignity act under which a terminally ill adult resident may obtain a prescription for medication to end the patient's life.

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

