



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

April 5, 2018

**GOV. MSG. NO. 1102**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Ninth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Twenty-Ninth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on April 5, 2018, the following bill was signed into law:

HB2739 HD1

RELATING TO HEALTH  
**Act 002 (18)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

---

---

# 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 at least thirty  
2 states have considered enacting laws to allow mentally competent  
3 adult residents who have a terminal illness to voluntarily  
4 request and receive a prescription medication that would allow  
5 the person to die in a peaceful, humane, and dignified manner.  
6 Of these, five states – Oregon, Washington, California, Vermont,  
7 and Colorado – and the District of Columbia have passed  
8 legislation to allow this choice.

9           The legislature further finds that Hawaii patients who are  
10 terminally ill and mentally capable currently have access to  
11 options which can, in most cases, alleviate their suffering  
12 during the dying process. Palliative care, hospice care, VSED  
13 (voluntarily stopping eating and drinking), or stopping  
14 artificial ventilation or other life-sustaining therapy to allow  
15 a comfortable natural death are options currently available to  
16 terminally ill persons in Hawaii. However, physicians and other  
17 health care providers often do not offer these options to their



1 patients. These options also do not always result in a quick or  
2 peaceful death.

3 The legislature has closely examined this issue a number of  
4 times over the past two decades. Following this long period of  
5 examination and debate, the legislature believes that it is  
6 appropriate to give patients the ability to choose their own  
7 medical care at the end of life and at the same time, ensure  
8 robust safeguards are in place to prevent any possible abuse.  
9 Therefore, the legislature believes that any legislation for  
10 patient choice must include all of the following protections for  
11 patients:

- 12 (1) Confirmation by two health care providers of the  
13 patient's diagnoses, prognosis, and medical decision-  
14 making capacity, and the voluntariness of the  
15 patient's request;
- 16 (2) Determination by a counselor that the patient is  
17 capable, and does not appear to be suffering from  
18 undertreatment or nontreatment of depression or other  
19 conditions which may interfere with the patient's  
20 ability to make an informed decision;



1 (3) Two oral requests from the patient, separated by not  
2 less than twenty days; one signed written request that  
3 is witnessed by two people, one of whom must be  
4 unrelated to the patient; and one signed final  
5 attestation;

6 (4) An additional waiting period between the written  
7 request and the writing of the prescription; and

8 (5) The creation of strict criminal penalties for any  
9 person who:

10 (A) Tamper with a person's request for a  
11 prescription pursuant to this Act; or

12 (B) Coerces a person with a terminal illness to  
13 request a prescription.

14 In addition, the patient at all times shall retain the right to  
15 rescind the request for medication and be under no obligation to  
16 fill the prescription or use the medication.

17 These rigorous safeguards will be the strongest of any  
18 state in the nation and will protect patients and their loved  
19 ones from any potential abuse.

20 The legislature concludes that adult, terminally ill  
21 residents of the State can determine their own medical treatment



1 as they near the end of life and should have a full complement  
 2 of support services available, including palliative care,  
 3 hospice care, aggressive medical care, and the right to choose  
 4 to avoid an unnecessarily prolonged life of pain and suffering.  
 5 The choice elected by an individual must be fully informed,  
 6 including about options for care that are presented and  
 7 discussed with health care providers in a values-neutral manner.

8 The purpose of this Act is to allow qualified patients in  
 9 this State with a medically confirmed terminal illness with less  
 10 than six months to live and possessing decisional capacity to  
 11 determine their own medical care at the end of their lives.

12 SECTION 2. This Act shall be known and may be cited as the  
 13 "Our Care, Our Choice Act".

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

17 **"CHAPTER**

18 **OUR CARE, OUR CHOICE ACT**

19 § -1 **Definitions.** As used in this chapter:

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



1 "Attending provider" means a physician licensed pursuant to  
2 chapter 453 who has responsibility for the care of the patient  
3 and treatment of the patient's terminal disease.

4 "Capable" means that in the opinion of the patient's  
5 attending provider or consulting provider, psychiatrist,  
6 psychologist, or clinical social worker, a patient has the  
7 ability to understand the patient's choices for care, including  
8 risks and benefits, and make and communicate health care  
9 decisions to health care providers.

10 "Consulting provider" means a physician licensed pursuant  
11 to chapter 453 who is qualified by specialty or experience to  
12 make a professional diagnosis and prognosis regarding the  
13 patient's disease.

14 "Counseling" means one or more consultations, which may be  
15 provided through telehealth, as necessary between a psychiatrist  
16 licensed under chapter 453, psychologist licensed under chapter  
17 465, or clinical social worker licensed pursuant to chapter 467E  
18 and a patient for the purpose of determining that the patient is  
19 capable, and that the patient does not appear to be suffering  
20 from undertreatment or nontreatment of depression or other



1 conditions which may interfere with the patient's ability to  
2 make an informed decision pursuant to this chapter.

3 "Department" means the department of health.

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

6 "Health care provider" means a person licensed, certified,  
7 or otherwise authorized or permitted by the law of this State to  
8 administer health care or dispense medication in the ordinary  
9 course of business or practice of a profession.

10 "Informed decision" means a decision by a qualified patient  
11 to request and obtain a prescription to end the qualified  
12 patient's life pursuant to this chapter. The informed decision  
13 shall be based on an appreciation of the relevant facts and made  
14 after being fully informed by the attending provider of:

- 15 (1) The medical diagnosis;
- 16 (2) The 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 and  
3 may decide not to use it; and

4 (6) The feasible alternatives or additional treatment  
5 opportunities, including but not limited to comfort  
6 care, hospice care, and pain control.

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

11 "Patient" means a person who is under the care of an  
12 attending provider.

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

16 "Prescription" means prescription medication or medications  
17 that the qualified patient may self-administer to end the  
18 qualified patient's life pursuant to this chapter.

19 "Qualified patient" means a capable adult who is a resident  
20 of the State and has satisfied the requirements of this chapter





1 in order to obtain a prescription to end the qualified patient's  
2 life pursuant to this chapter.

3 "Self-administer" means an individual performing an  
4 affirmative, conscious, voluntary act to take into the  
5 individual's body prescription medication to end the  
6 individual's life pursuant to this chapter.

7 "Telehealth" shall have the same meaning as defined in  
8 section 453-1.3.

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

12 "Terminal disease" does not include age or any physical  
13 disability or condition that is not likely to, by itself, cause  
14 death within six months.

15 § -2 Oral and written requests for medication;  
16 initiated. An adult who is capable, is a resident of the State,  
17 and has been determined by an attending provider and consulting  
18 provider to be suffering from a terminal disease, and who has  
19 voluntarily expressed the adult's wish to die, may, pursuant to  
20 section -9, submit:

21 (1) Two oral requests, a minimum of twenty days apart; and



1           (2) One written request,  
2 for a prescription that may be self-administered for the purpose  
3 of ending the adult's life in accordance with this chapter. The  
4 attending provider shall directly, and not through a designee,  
5 receive all three requests required pursuant to this section.

6           § -3 Form of the written request. (a) A valid written  
7 request for a prescription under this chapter shall be  
8 substantially in the form described in section -23, and shall  
9 be signed and dated by the qualified patient and witnessed by at  
10 least two individuals who, in the presence of the qualified  
11 patient, attest that to the best of their knowledge and belief  
12 the qualified patient is of sound mind, acting voluntarily, and  
13 is not being coerced to sign the request.

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

15           (1) A relative of the qualified patient by blood,  
16 marriage, or adoption;

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



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

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

6           § -4 Attending provider; duties. (a) The attending  
7           provider shall:

8           (1) Make the initial determination of whether a patient  
9           has a terminal disease, is capable of medical  
10           decision-making, and has made the request for the  
11           prescription voluntarily;

12           (2) Require that the patient demonstrate residency  
13           pursuant to section -13;

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

16           (A) Patient's medical diagnosis;

17           (B) Patient's prognosis;

18           (C) Potential risks associated with taking the  
19           medication to be prescribed;

20           (D) Probable result of taking the medication to be  
21           prescribed;



- 1 (E) Possibility that the individual may choose not to  
2 obtain the medication or may obtain the  
3 medication but may decide not to use it; and
- 4 (F) Feasible alternatives or additional treatment  
5 opportunities, including but not limited to  
6 comfort care, hospice care, and pain control;
- 7 (4) Refer the patient to a consulting provider for medical  
8 confirmation of the diagnosis, and for a determination  
9 that the patient is capable and acting voluntarily;
- 10 (5) Refer the patient for counseling;
- 11 (6) Recommend that the patient notify next of kin;
- 12 (7) Counsel the patient about the importance of having  
13 another person present when the qualified patient  
14 self-administers the prescription prescribed pursuant  
15 to this chapter and of not self-administering the  
16 prescription in a public place;
- 17 (8) Inform the patient that a qualified patient may  
18 rescind the request at any time and in any manner, and  
19 offer the qualified patient an opportunity to rescind  
20 the request at the time of the qualified patient's  
21 second oral request made pursuant to section -9;



- 1           (9) Verify, immediately prior to writing the prescription
- 2                 for medication under this chapter, that the qualified
- 3                 patient is making an informed decision;
- 4           (10) Fulfill the medical record documentation requirements
- 5                 of section     -12;
- 6           (11) Ensure that all appropriate steps are carried out in
- 7                 accordance with this chapter prior to writing a
- 8                 prescription for medication to enable a qualified
- 9                 patient to end the qualified patient's life pursuant
- 10                to this chapter; and
- 11          (12) Either:
- 12                (A) Dispense medications directly, including
- 13                    ancillary medications intended to facilitate the
- 14                    desired effect to minimize the patient's
- 15                    discomfort; provided that the attending provider
- 16                    is authorized to dispense controlled substances
- 17                    pursuant to chapter 329, has a current Drug
- 18                    Enforcement Administration certificate, and
- 19                    complies with any applicable administrative
- 20                    rules; or
- 21                (B) With the qualified patient's written consent:



- 1 (i) Contact a pharmacist of the qualified  
2 patient's choice and inform the pharmacist  
3 of the prescription; and
- 4 (ii) Transmit the written prescription  
5 personally, by mail, or electronically to  
6 the pharmacist, who shall dispense the  
7 medication to either the qualified patient,  
8 the attending provider, or an expressly  
9 identified agent of the qualified patient.

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

14 § -5 Consulting provider; confirmation. Before a  
15 patient is qualified under this chapter, a consulting provider  
16 shall examine the patient and the patient's relevant medical  
17 records and confirm, in writing, the attending provider's  
18 diagnosis that the patient is suffering from a terminal disease  
19 and the attending provider's prognosis, and verify that the  
20 patient is capable, is acting voluntarily, and has made an  
21 informed decision.



1           §   -6   **Counseling referral.** The attending provider shall  
2 refer the patient for counseling. No medication to end a  
3 patient's life pursuant to this chapter shall be prescribed  
4 until the person performing the counseling determines that the  
5 patient is capable, and does not appear to be suffering from  
6 undertreatment or nontreatment of depression or other conditions  
7 which may interfere with the patient's ability to make an  
8 informed decision pursuant to this chapter.

9           §   -7   **Informed decision.** No qualified patient shall  
10 receive a prescription for medication to end the qualified  
11 patient's life pursuant to this chapter unless the qualified  
12 patient has made an informed decision. Immediately prior to  
13 writing a prescription under this chapter, the attending  
14 provider shall verify that the qualified patient is making an  
15 informed decision.

16           §   -8   **Family notification.** The attending provider shall  
17 recommend that the qualified patient notify the qualified  
18 patient's next of kin of the request for a prescription pursuant  
19 to this chapter. A qualified patient who declines or is unable  
20 to notify next of kin shall not have the qualified patient's  
21 request denied solely for that reason.



1           §   -9   **Written and oral requests.** To receive a  
2 prescription for medication that a qualified patient may self-  
3 administer to end the qualified patient's life pursuant to this  
4 chapter, a qualified patient shall have made an oral request and  
5 a written request, and reiterate the oral request to the  
6 qualified patient's attending provider not less than twenty days  
7 after making the initial oral request. At the time the  
8 qualified patient makes the second oral request, the attending  
9 provider shall offer the qualified patient an opportunity to  
10 rescind the request.

11           §   -10   **Right to rescind request.** A qualified patient may  
12 rescind the request at any time and in any manner without regard  
13 to the qualified patient's mental state. No prescription under  
14 this chapter shall be made available pursuant to section -  
15 4(a)(12) if the attending provider has not offered the qualified  
16 patient an opportunity to rescind the request at the time of the  
17 second oral request made pursuant to section -9.

18           §   -11   **Waiting periods.** Not less than twenty days shall  
19 elapse between the qualified patient's initial oral request and  
20 the taking of steps to make available a prescription pursuant to  
21 section -4(a)(12). Not less than forty-eight hours shall





1 elapse between the qualified patient's written request and the  
2 taking of steps to make available a prescription pursuant to  
3 section -4(a)(12).

4 § -12 **Medical record; documentation requirements.** The  
5 following shall be documented or filed in a qualified patient's  
6 medical record:

- 7 (1) All oral requests by the qualified patient for a  
8 prescription to end the qualified patient's life  
9 pursuant to this chapter;
- 10 (2) All written requests by the qualified patient for a  
11 prescription to end the qualified patient's life  
12 pursuant to this chapter;
- 13 (3) The attending provider's diagnosis and prognosis and  
14 determination that the qualified patient is capable,  
15 acting voluntarily, and has made an informed decision;
- 16 (4) The consulting provider's diagnosis and prognosis and  
17 verification that the qualified patient is capable,  
18 acting voluntarily, and has made an informed decision;
- 19 (5) The counselor's statement of determination that the  
20 patient is capable, and does not appear to be  
21 suffering from undertreatment or nontreatment of



1 depression or other conditions which may interfere  
2 with the patient's ability to make an informed  
3 decision pursuant to this chapter;

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

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

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

- 16 (1) Possession of a Hawaii driver's license or civil  
17 identification card;
- 18 (2) Registration to vote in Hawaii;
- 19 (3) Evidence that the patient owns or leases property in  
20 Hawaii; or



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

3 § -14 Reporting requirements. (a) Within thirty  
4 calendar days of writing a prescription, the attending provider  
5 shall submit a copy of the qualified patient's written request,  
6 as well as copy of all the documentation required pursuant to  
7 section -12 to the department.

8 (b) Within thirty calendar days following notification of  
9 the qualified patient's death from use of a prescribed  
10 medication pursuant to this chapter, or any other cause, the  
11 attending provider shall submit any follow-up information to the  
12 documentation required pursuant to section -12 to the  
13 department.

14 (c) The department shall annually collect and review all  
15 information submitted pursuant to this chapter. The information  
16 collected shall be confidential and shall be collected in such a  
17 manner that protects the privacy of all qualified patients, the  
18 qualified patients' family, and any attending provider,  
19 consulting provider, or counselor involved with a qualified  
20 patient pursuant to this chapter. Information collected  
21 pursuant to this section by the department shall not be



1 disclosed, discoverable, or compelled to be produced in any  
2 civil, criminal, administrative, or other proceeding.

3 (d) On or before July 1, 2019, and each year thereafter,  
4 the department shall create a report of information collected  
5 under subsection (c) and vital statistics records maintained by  
6 the department and shall post the report on the department's  
7 website. Information contained in the report shall only  
8 include:

- 9 (1) The number of qualified patients for whom a  
10 prescription was written pursuant to this chapter;
- 11 (2) The number of known qualified patients who died each  
12 year for whom a prescription was written pursuant to  
13 this chapter and the cause of death of those qualified  
14 patients;
- 15 (3) The total number of prescriptions written pursuant to  
16 this chapter for the year in which the report was  
17 created as well as cumulatively for all years  
18 beginning with 2019;
- 19 (4) The total number of qualified patients who died while  
20 enrolled in hospice or other similar palliative care  
21 program;



- 1 (5) The number of known deaths in Hawaii from a
- 2 prescription written pursuant to this chapter per
- 3 five-thousand deaths in Hawaii;
- 4 (6) The number of attending providers who wrote
- 5 prescriptions pursuant to this chapter;
- 6 (7) Of the people who died as a result of self-
- 7 administering a prescription pursuant to this chapter,
- 8 the individual's:
- 9 (A) Age at death;
- 10 (B) Education level;
- 11 (C) Race;
- 12 (D) Sex;
- 13 (E) Type of insurance, if any; and
- 14 (F) Underlying illness; and
- 15 (8) Any other data deemed appropriate by the department.

16 § -15 Disposal of unused medication. A person who has  
 17 custody or control of any unused medication dispensed under this  
 18 chapter after the death of a qualified patient shall personally  
 19 deliver the unused medication for disposal to the nearest  
 20 qualified facility that properly disposes of controlled



1 substances, or if none is available, shall dispose of it by  
2 lawful means.

3       **§ -16 Effect on construction of wills or contracts. (a)**

4 No provision in any will or contract, or other agreement,  
5 whether written or oral, to the extent the provision would  
6 affect whether a person may make or rescind a request for a  
7 prescription to end the person's life pursuant to this chapter,  
8 shall be valid.

9       (b) No obligation owing under any currently existing  
10 contract shall be conditioned or affected by the making or  
11 rescinding of a request, by a person, for a prescription to end  
12 the person's life pursuant to this chapter.

13       **§ -17 Insurance or annuity policies.** The sale,  
14 procurement, or issuance of any life, health, or accident  
15 insurance or annuity policy or the rate charged for any such  
16 policy shall not be conditioned upon or affected by the making  
17 or rescinding of a request, by a person, for a prescription to  
18 end the person's life pursuant to this chapter. A qualified  
19 patient's act of using medication to end the qualified patient's  
20 life pursuant to this chapter shall have no effect upon a life,  
21 health, or accident insurance or annuity policy.



1           **§ -18 Construction of chapter.** (a) Nothing in this  
2 chapter shall be construed to authorize a health care provider,  
3 health care facility, or any other person to end a patient's  
4 life by lethal injection, mercy killing, or active euthanasia.  
5 Actions taken in accordance with this chapter shall not, for any  
6 purpose, constitute suicide, assisted suicide, mercy killing,  
7 murder, manslaughter, negligent homicide, or any other criminal  
8 conduct under the law.

9           (b) Nothing in this chapter shall be construed to allow a  
10 lower standard of care for qualified patients in the community  
11 where the qualified patient is treated or in a similar  
12 community.

13           **§ -19 Immunities; basis for prohibiting health care**  
14 **provider from participation; notification; permissible**  
15 **sanctions.** (a) Except as provided in section -20 and  
16 subsection (c):

17           (1) No person shall be subject to civil or criminal  
18 liability or professional disciplinary action for  
19 participating or acting in good faith compliance with  
20 this chapter, including being present when a qualified  
21 patient self-administers the prescribed medication to



- 1 end the qualified patient's life pursuant to this  
2 chapter;
- 3 (2) No professional organization or association, health  
4 care provider, or health care facility shall subject  
5 any person to censure, discipline, suspension, loss of  
6 license, loss of privileges, loss of membership, or  
7 other penalty for participating or refusing to  
8 participate in good faith compliance with this  
9 chapter;
- 10 (3) No request by a qualified patient for a prescription  
11 or provision by a health care provider of a  
12 prescription or medication in good faith compliance  
13 with this chapter shall constitute neglect, harm,  
14 self-neglect, or abuse for any purpose of law or  
15 provide the sole basis for the appointment of a  
16 guardian or conservator;
- 17 (4) No health care provider or health care facility shall  
18 be under any duty, whether by contract, statute, or  
19 any other legal requirement, to participate in the  
20 provision to a qualified patient of a prescription or  
21 of medication to end the qualified patient's life





1           pursuant to this chapter. If a health care provider  
2           is unable or unwilling to carry out a patient's  
3           request under this chapter and the patient transfers  
4           the patient's care to a new health care provider, the  
5           prior health care provider shall transfer, upon  
6           request, a copy of the patient's relevant medical  
7           records to the new health care provider; and

8           (5) No health care facility shall be subject to civil or  
9           criminal liability for acting in good faith compliance  
10          with this chapter.

11          (b) Notwithstanding any other provision of law, a health  
12          care facility may prohibit a health care provider from  
13          participating in actions covered by this chapter on the premises  
14          of the health care facility if the health care facility has  
15          notified the health care provider of the health care facility's  
16          policy regarding participation in actions covered by this  
17          chapter. Nothing in this subsection shall prevent a health care  
18          provider from providing health care services to a patient that  
19          do not constitute participation in actions covered by this  
20          chapter.



1 (c) Subsection (a) notwithstanding, if the health care  
2 facility has notified the health care provider prior to  
3 participation in actions covered by this chapter that the health  
4 care facility prohibits participation on its premises in actions  
5 covered by this chapter, the health care facility may subject  
6 the health care provider to the following sanctions:

7 (1) Loss of privileges, loss of membership, or other  
8 sanction provided pursuant to the medical staff  
9 bylaws, policies, and procedures of the health care  
10 facility if the health care provider is a member of  
11 the health care facility's medical staff and  
12 participates in actions covered by this chapter while  
13 on the premises of the health care facility other than  
14 in the private medical office of the health care  
15 provider;

16 (2) Termination of lease or other property contract or  
17 other nonmonetary remedies provided by lease contract,  
18 not including loss or restriction of medical staff  
19 privileges or exclusion from a provider panel, if the  
20 health care provider participates in actions covered  
21 by this chapter while on the premises of the health



1 care facility or on property that is owned by or under  
2 the direct control of the health care facility; or  
3 (3) Termination of contract or other nonmonetary remedies  
4 provided by contract if the health care provider  
5 participates in actions covered by this chapter while  
6 acting in the course and scope of the health care  
7 provider's capacity as an employee or independent  
8 contractor of the health care facility; provided that  
9 nothing in this paragraph shall be construed to  
10 prevent:

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

16 (B) A patient from contracting with the patient's  
17 attending provider, consulting provider, or  
18 counselor to act outside the course and scope of  
19 those providers' capacity as an employee or  
20 independent contractor of the health care  
21 facility.



1 (d) A health care facility that imposes sanctions pursuant  
2 to subsection (c) shall follow all due process and other  
3 procedures the health care facility may have that are related to  
4 the imposition of sanctions on a health care provider.

5 (e) For the purposes of this section:

6 "Notify" means to deliver a separate statement in writing  
7 to a health care provider specifically informing the health care  
8 provider prior to the health care provider's participation in  
9 actions covered by this chapter of the health care facility's  
10 policy regarding participation in actions covered by this  
11 chapter.

12 "Participate in actions covered by this chapter" means to  
13 perform the duties of an attending provider pursuant to section  
14 -4, the consulting provider function pursuant to section -  
15 5, or the counseling referral function or counseling pursuant to  
16 section -6. The term does not include:

- 17 (1) Making an initial determination that a patient has a  
18 terminal disease and informing the patient of the  
19 medical prognosis;
- 20 (2) Providing information about this chapter to a patient  
21 upon the request of the patient;



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

3 (4) Entering into a contract with a patient as the  
4 patient's attending provider, consulting provider, or  
5 counselor to act outside of the course and scope of  
6 the health care provider's capacity as an employee or  
7 independent contractor of a health care facility.

8 (f) Action taken pursuant to sections -4 through -6  
9 shall not be the sole basis for disciplinary action under  
10 sections 453-8, 465-13, or 467E-12.

11 § -20 Prohibited acts; penalties. (a) Any person who  
12 intentionally makes, completes, alters, or endorses a request  
13 for a prescription made pursuant to section -2, for another  
14 person, or conceals or destroys any documentation of a  
15 rescission of a request for a prescription completed by another  
16 person, shall be guilty of a class A felony.

17 (b) Any person who knowingly coerces or induces a patient  
18 by force, threat, fraud, or intimidation to request a  
19 prescription pursuant to section -2, shall be guilty of a  
20 class A felony.



1 (c) Nothing in this section shall limit any liability for  
2 civil damages resulting from any intentional or negligent  
3 conduct by any person in violation of this chapter.

4 (d) The penalties in this chapter are cumulative and shall  
5 not preclude criminal penalties pursuant to other applicable  
6 state law.

7 **§ -21 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 attorneys' fees related  
12 to enforcing the claim.

13 **§ -22 Severability.** Any provision of this chapter that

14 is held invalid as to any person or circumstance shall not  
15 affect the application of any other provision of this chapter  
16 that can be given full effect without the invalid provision or  
17 application.

18 **§ -23 Form of the request.** A request for a prescription

19 as authorized by this chapter shall be in substantially the  
20 following form:

21 "REQUEST FOR MEDICATION TO END MY LIFE



1 I, \_\_\_\_\_, am an adult of sound mind.

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

5 I have received counseling to determine that I am capable  
6 and not suffering from undertreatment or nontreatment of  
7 depression or other conditions which may interfere with my  
8 ability to make an informed decision.

9 I have been fully informed of my diagnosis, prognosis, the  
10 nature of medication to be prescribed and potential associated  
11 risks, the expected result, the possibility that I may choose  
12 not to obtain or not to use the medication, and the feasible  
13 alternatives or additional treatments, including comfort care,  
14 hospice care, and pain control.

15 I request that my attending provider prescribe medication  
16 that I may self-administer to end my life.

17 INITIAL ONE:

18 \_\_\_\_\_ I have informed my family of my decision and  
19 taken their opinions into consideration.

20 \_\_\_\_\_ I have decided not to inform my family of my  
21 decision.



1           \_\_\_\_\_ I have no family to inform of my decision.  
 2           I understand that I have the right to rescind this request  
 3 at any time.

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

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

11           Signed: \_\_\_\_\_

12           Dated: \_\_\_\_\_

13 DECLARATION OF WITNESSES

14           We declare that the person signing this request:

- 15           (a) Is personally known to us or has provided proof of
- 16                   identity;
- 17           (b) Signed this request in our presence;
- 18           (c) Appears to be of sound mind and not under duress or to
- 19                   have been induced by fraud, or subjected to undue
- 20                   influence when signing the request; and





1 (d) Is not a patient for whom either of us is the  
2 attending provider.

3 \_\_\_\_\_ Witness Date \_\_\_\_\_

4 \_\_\_\_\_ Witness Date \_\_\_\_\_

5 NOTE: One witness shall not be a relative (by blood,  
6 marriage, or adoption) of the person signing this request, shall  
7 not be entitled to any portion of the person's estate upon death  
8 and shall not own, operate, or be employed at a health care  
9 facility where the person is a patient or resident."

10 § -24 Form of final attestation. (a) A final  
11 attestation form shall be given to a qualified patient at the  
12 time an attending provider writes or dispenses the prescription  
13 authorized by this chapter and shall be in substantially the  
14 following form:

15 "FINAL ATTESTATION FOR A REQUEST FOR MEDICATION TO END MY LIFE

16 I, \_\_\_\_\_, am an adult of sound mind.

17 I am suffering from \_\_\_\_\_, which my attending  
18 provider has determined is a terminal disease and that has been  
19 medically confirmed by a consulting provider.

20 I have received counseling to determine that I am capable  
21 and not suffering from undertreatment or nontreatment of



1 depression or other conditions which may interfere with my  
2 ability to make an informed decision.

3 I have been fully informed of my diagnosis, prognosis, the  
4 nature of medication to be prescribed and potential associated  
5 risks, the expected result, the possibility that I may choose  
6 not to obtain or not to use the medication, and the feasible  
7 alternatives or additional treatment options, including comfort  
8 care, hospice care, and pain control.

9 I understand that I am requesting that my attending  
10 provider prescribe medication that I may self-administer to end  
11 my life.

12 INITIAL ONE:

13 \_\_\_\_\_ I have informed my family of my decision and  
14 taken their opinions into consideration.

15 \_\_\_\_\_ I have decided not to inform my family of my  
16 decision.

17 \_\_\_\_\_ I have no family to inform of my decision.

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



1 I understand that I still may choose not to use the  
2 medication prescribed and by signing this form I am under no  
3 obligation to use the medication prescribed.

4 I am fully aware that the prescribed medication will end my  
5 life and while I expect to die when I take the medication  
6 prescribed, I also understand that my death may not be immediate  
7 and my attending provider has counseled me about this  
8 possibility.

9 I make this request voluntarily and without reservation.

10 Signed: \_\_\_\_\_

11 Dated: \_\_\_\_\_"

12 (b) The final attestation form shall be completed by the  
13 qualified patient within forty-eight hours prior to the  
14 qualified patient self-administration of the medication  
15 prescribed pursuant to this chapter. Upon the qualified  
16 patient's death, the completed final attestation form shall be  
17 delivered by the qualified patient's health care provider,  
18 family member, or other representative to the attending provider  
19 for inclusion in the qualified patient's medical record.

20 § -25 Annual report. The department shall submit to the  
21 legislature an annual report no later than twenty days prior to



1 the convening of each regular session. The report shall include  
2 but not be limited to:

- 3 (1) An annual analysis of the implementation of this  
4 chapter, including any implementation problems; and  
5 (2) Any proposed legislation."

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

8 "(c) This chapter shall not authorize mercy killing,  
9 assisted suicide, euthanasia, or the provision, withholding, or  
10 withdrawal of health care, to the extent prohibited by other  
11 statutes of this State[-]; provided that this subsection shall  
12 not apply to actions taken under chapter \_\_\_\_\_."

13 SECTION 5. Section 327H-2, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

- 15 "(b) Nothing in this section shall be construed to:  
16 (1) Expand the authorized scope of practice of any  
17 licensed physician;  
18 (2) Limit any reporting or disciplinary provisions  
19 applicable to licensed physicians and surgeons who  
20 violate prescribing practices; and



- 1 (3) Prohibit the discipline or prosecution of a licensed  
2 physician for:
- 3 (A) Failing to maintain complete, accurate, and  
4 current records that document the physical  
5 examination and medical history of a patient, the  
6 basis for the clinical diagnosis of a patient,  
7 and the treatment plan for a patient;
- 8 (B) Writing false or fictitious prescriptions for  
9 controlled substances scheduled in the Federal  
10 Comprehensive Drug Abuse Prevention and Control  
11 Act of 1970, 21 United States Code 801 et seq. or  
12 in chapter 329;
- 13 (C) Prescribing, administering, or dispensing  
14 pharmaceuticals in violation of the provisions of  
15 the Federal Comprehensive Drug Abuse Prevention  
16 and Control Act of 1970, 21 United States Code  
17 801 et seq. or of chapter 329;
- 18 (D) Diverting medications prescribed for a patient to  
19 the licensed physician's own personal use; and



1 (E) Causing, or assisting in causing, the suicide,  
2 euthanasia, or mercy killing of any individual;  
3 provided that ~~[it]~~:

4 (i) It is not "causing, or assisting in causing,  
5 the suicide, euthanasia, or mercy killing of  
6 any individual" to prescribe, dispense, or  
7 administer medical treatment for the purpose  
8 of treating severe acute pain or severe  
9 chronic pain, even if the medical treatment  
10 may increase the risk of death, so long as  
11 the medical treatment is not also furnished  
12 for the purpose of causing, or the purpose  
13 of assisting in causing, death for any  
14 reason~~[-]~~; and

15 (ii) This subparagraph shall not apply to actions  
16 taken under chapter \_\_\_\_\_."

17 SECTION 6. Section 707-701.5, Hawaii Revised Statutes, is  
18 amended by amending subsection (1) to read as follows:

19 "(1) Except as provided in section 707-701, a person  
20 commits the offense of murder in the second degree if the person  
21 intentionally or knowingly causes the death of another



1 person[-]; provided that this section shall not apply to actions  
2 taken under chapter \_\_\_\_\_."

3 SECTION 7. Section 707-702, Hawaii Revised Statutes, is  
4 amended by amending subsection (1) to read as follows:

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

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

8 (b) The person intentionally causes another person to  
9 commit suicide[-];

10 provided that this section shall not apply to actions taken  
11 under chapter \_\_\_\_\_."

12 SECTION 8. The department of health shall form an advisory  
13 group consisting of a designee of the department and no fewer  
14 than five other members, which shall include, at least, one  
15 palliative care specialist, hospice care specialist, medical  
16 educator, and a non-medical member of the community. The  
17 advisory group shall provide advice to the department to  
18 facilitate the implementation of chapter \_\_\_\_\_, Hawaii Revised  
19 Statutes, including:

20 (1) The data set to be collected and tracked by the  
21 department;



1 (2) The preparation of appropriate forms and checklists  
2 for use by attending providers, consulting providers,  
3 and counselors; and

4 (3) Otherwise assisting the department with the  
5 implementation of chapter , Hawaii Revised  
6 Statutes.

7 SECTION 9. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10 SECTION 10. If any provision of this Act, or the  
11 application thereof to any person or circumstance, is held  
12 invalid, the invalidity does not affect other provisions or  
13 applications of the Act that can be given effect without the  
14 invalid provision or application, and to this end the provisions  
15 of this Act are severable.

16 SECTION 11. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 12. This Act shall take effect on January 1, 2019;  
19 provided that section 8 shall take effect upon approval.





APPROVED this 5 day of APR, 2018

A handwritten signature in black ink, appearing to read "David Ige". The signature is fluid and cursive, with the first name "David" and the last name "Ige" clearly distinguishable.

GOVERNOR OF THE STATE OF HAWAII

HB No. 2739, HD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: March 6, 2018  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki  
Speaker  
House of Representatives

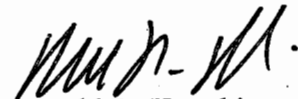


Brian L. Takeshita  
Chief Clerk  
House of Representatives

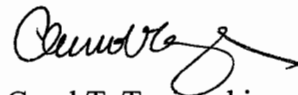
THE SENATE OF THE STATE OF HAWAII

Date: **MAR 29 2018**  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the Senate of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Ronald D. Kouchi  
President of the Senate



Carol T. Taniguchi  
Clerk of the Senate