



Analysis of Hawaii S.B. 323¹

The bill amends H.B. 2739, the Hawaii 2018 "Our Care, Our Choice Act," to authorize advanced practice registered nurses (along with physicians) to serve as attending, S.B. 323, §2 (2), and consulting, S.B. 323, § 2(3), medical providers, thus permitting them to prescribe lethal medication; and to authorize psychiatric mental health nurse practitioners (along with psychiatrists, psychologists, and clinical social workers) to provide the mental health counseling required before such medication is prescribed. S.B. 323, Section 2(4).

Nothing in the bill prevents both the attending and consulting medical providers to be advanced practice registered nurses. Nothing in the bill requires that the attending and consulting providers be independent: Thus, the registered nurse can confirm the decisions of a physician he works under; and a physician can confirm the decision of a registered nurse who works under her.

The findings set out in Section 1 do not address a need to expand counseling to include psychiatric mental health nurse practitioners. Further, the Department of Health 2019 "Our Care, Our Choice" Annual Report, in which the Department "shall list any implementing problems []," H.B. 2739, § 25(1), did not raise this as a problem and did not include the addition of such practitioners in its legislative recommendations. Since counseling can be provided through "telehealth," H.B. 2739, § 1, there is no apparent reason why counseling cannot be provided adequately to patients on the neighbor islands by those providers the Act already authorizes.

Another purpose of the bill is to "Reduce the mandatory waiting period between oral requests from twenty days to fifteen days[.]" S.B. 323, Section 1(3). See S.B. 323, § 3(1); S.B. 323, § 4. Following a "long period of examination and debate," the Hawaii Legislature in Section 1(3) of H.B. 2739 had expressed its belief that "any legislation for patient choice must include ... Two oral requests from the patient, separated by not less than twenty days" and recognized that "These rigorous safeguards will be the strongest of any state in the nation and will protect patients and their loved ones from any potential abuse." The Legislature in adopting H.B. 2739 thus contemplated that any reduction in the protection it afforded would require substantial justification.

Section 1 of S.B. 323 justifies its reduction of these robust protections by claiming that many patients in Hawaii die before the statutory waiting period for the lethal prescription ends.² Though noting that some providers agree, the Annual Report itself makes no mention of patients who may have died before making the second oral request and does not call for the reduction of the waiting period from twenty to fifteen days in its legislative recommendations.³

¹ The provisions of H.B. 487 are identical.

² Contrary to the Findings of Fact, nine, not ten, States and the District of Columbia authorize physician-assisted suicide, eight by statute or ballot initiative, Montana by judicial decree.

³ According to the Annual Report, The average time between the two oral requests was twenty-eight days, "with Patients who received services from within large, well-networked organizations ... [having] the shortest waiting periods compared to private practicing providers in the community."

Section 1 further claims that a "high percentage" of patients in States permitting physician-assisted suicide die before the statutory waiting period for the lethal prescription ends. Since the annual reports of such states provide data only on patients for whom lethal prescriptions have been written, there is no basis for this claim.

Finally, Section 5(c) permits attending medical providers to waive the fifteen-day waiting period if they judge that the patient will die before the period ends. See § 1(4). Such decisions can rest on only a "reasonable medical judgement," even though their consequences are swift and irreversible and even though the language does not require confirmation by a consulting provider, as the Department's Annual Report recommends. Further, it is unclear, if a waiver is made, whether the written request, the patient's attestation before taking the lethal medication, and any mental health counseling are still required.