

STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony in SUPPORT of H.B. 1122
RELATING TO HEALTH

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

Hearing Date, Time and Room: Friday, February 3, 2023 at 9:30 a.m. in Room 329/VIDEO

1 **Fiscal Implications:** Undetermined.

2 **Department Position:** The Department of Health (“Department”) supports this measure and
3 offers comments.

4 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following
5 testimony on behalf of the Department.

6 The purpose of this measure is to amend Hawaii Revised Statutes §334-59 by requiring a
7 patient who is examined in the hospital emergency department or hospitalized on an
8 emergency basis, who is found to be lacking decisional capacity, to be assessed to determine
9 whether a surrogate or a guardian is needed to make appropriate health care decisions for the
10 individual.

11 The Department is committed to addressing the needs of individuals who live with
12 behavioral health issues and need necessary medical treatment when it is in their best interest.
13 Assisted Community Treatment (ACT) is an important method to ensure the application of
14 those services for those who would benefit from treatment over their objection. The
15 Department is committed to supporting the availability and effectiveness of ACT, including
16 working with state agencies and community partners to improve access and implementation.

1 We ask for clarification from the Legislature regarding the number of surrogates and/or
2 guardians that are expected to be needed. We also ask if there is a sufficient number of
3 guardians available in the workforce to take on this additional task. If so, what would happen if
4 surrogates or guardians are requested, but are not available?

5 If enacted into law, support for the procedural processes and any increased workforce
6 demands should be considered.

7 **Offered Amendments:** None

8 Thank you for the opportunity to testify on this measure.



The Institute for Human Services, Inc.
Ending the Cycle of Homelessness

TO: Honorable Rep. Della Au Belatti
Chair, House Committee on Health and Homelessness

FROM: Connie Mitchell, Executive Director
IHS, The Institute for Human Services, Inc.

RE: HB1122 – RELATING TO HEALTH

HEARING: February 3, 2023 at 9:30 AM

POSITION: IHS supports the passing of HB 1122

The Institute for Human Services supports the intent of HB1122 of encouraging the assessment of decisional capacity more frequently in the emergency department and hospital to determine if guardianship or assisted community should be sought. Either petition will require a statement of capacity and the evaluation in the hospital could help launch the petitioning process..

Having frequently observed the impact of lack of access to mental health treatment among chronically homeless individuals to include, but not limited to, amputations, sepsis, bodily injury, traffic accidents and death, we believe this measure will facilitate earlier treatment, save health care resources, and simply save lives by expediting guardianships and assisted community treatment petitioning process,

Currently, a diagnosis of mental illness is not connected to initiating a petition for order of treatment or guardian appointment, meaning that there is delay between diagnosis and treatment. During such time, individuals can be released from emergency services while still being a danger to themselves and others.

If a guardianship is appropriate to authorize treatment over objection, it usually takes months for the petition to be granted. An emergency guardianship would allow a period of treatment until the actual guardianship is successfully awarded.



HINAMAUKA

HB1122 Guardians or Surrogates for Emergency Room Decisions COMMITTEE ON HEALTH & HOMELESSNESS

Rep. Della Au Belatti, Chair

Rep. Jenna Takenouchi, Vice Chair

Friday, Feb 3 2023: 9:30 : Room 329

Hina Mauka supports HB1122:

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the CEO of Hina Mauka, providing services for substance use disorder and mental health including programs for prevention, adult addiction treatment, adolescent treatment, case management, and withdrawal management. Helping people on Oahu and Kauai.

This bill would allow psychiatrists or APRN having prescriptive authority to determine if a surrogate or guardian is needed to make health care decisions for a patient. It's a step in the right direction for people to receive the treatment they desperately need.

Trends:

37 states now include chronic substance abuse and/or chronic mental health disorders to be included for psychiatrists or APRN having prescriptive authority for making decisions about treatment in some form or another. This bill defers decision making to surrogates or guardians.

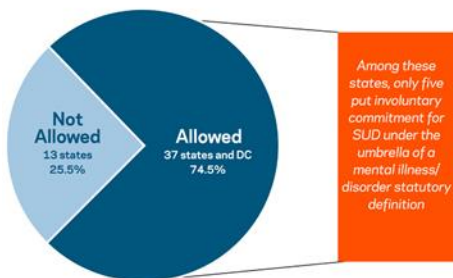


Figure 1. Legal Provision for Involuntary Commitment for Substance Use Disorders among U.S. states and DC (N=51)

Among these states, only five put involuntary commitment for SUD under the umbrella of a mental illness/disorder statutory definition

For individuals with severe substance use disorder, several states are now implementing involuntary commitment laws for the first time or proposing changes to existing laws that would remove barriers to make commitment less difficult.

The substance abuse treatment gap between the need and access stems from the inability of some individuals to seek treatment voluntarily.¹

- Individuals with a substance use disorder and/or mental health disorders often feel helpless and disempowered because they are unable, due to an impaired brain, to make rational decisions such that situations can escalate to the point where they are at great risk for overdose and/or death.
- Involuntary commitment laws for substance use disorder can be a way to initiate the treatment these individuals need to avoid death and ultimately re-establish productive and healthy lives.

What Treatment is Best. People with severe substance use disorder are often recommended **residential treatment that can ultimately transition, or step down, to outpatient treatment** and other lower levels of care. Such determinations are made by professionals based on criteria established by the American Society of Addiction Medicine.² Addiction is like other chronic illnesses in that the sooner it is recognized and the longer it is treated, the better the chances of recovery.

We appreciate the opportunity to provide testimony and are available for further questions.

¹ Hazelden Betty Ford Foundation: Involuntary Commitment for Substance Use Disorders: <https://www.hazeldenbettyford.org/education/bcr/addiction-research/involuntary-commitment-edt-717>

² Mee-Lee, D. E. (2013). The ASAM criteria: Treatment criteria for addictive, substance-related, and co-occurring conditions. Rockville, MD: American Society of Addiction Medicine.

HB-1122

Submitted on: 2/1/2023 4:07:41 PM

Testimony for HLT on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Hawaii Disability Rights Center	Comments	Remotely Via Zoom

Comments:

Regarding the assessment for the appointment of a surrogate or a guardian, we are open to this as a possible way to provide treatment, though we are not certain how exactly it would work. As to a surrogate, we don't believe this provision of the law has been used in this context previously, and it is not clear how long it would take to find a surrogate and whether the person could be held at the hospital while all that was occurring. It might be very appropriate to seek the appointment of a guardian but that is a judicial process that would presumably take some time.

So long as the individual was not detained at the hospital or otherwise subjected to a deprivation of their rights, this is an idea that is worth further exploration.



THE QUEEN'S HEALTH SYSTEM

To: The Honorable Della Au Belatti, Chair
The Honorable Jenna Takenouchi, Vice Chair
Members, House Committee on Health & Homelessness

From: Sondra Leiggi-Brandon, Vice-President - Patient-Care and Behavioral Health, The Queen's Health System

Jacce Mikulanec, Director, Government Relations, The Queen's Health System

Date: February 3, 2023

Re: Comments on HB 1122: Relating to Health

The Queen's Health System (Queen's) is a nonprofit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, and more than 10,000 affiliated physicians, caregivers, and dedicated medical staff statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to provide comments on HB 1122, which would require assessment of patients who are subject to emergency hospitalization, diagnosed with a mental illness or severe substance use disorder, and found to be lacking decisional capacity to determine if a surrogate or guardian needs to be appointed to make appropriate health care decisions for the patient.

We appreciate the intent of the measure to address challenges facing patients with compromised decisional ability in an emergent acute care setting; however, under existing statute and practice, if a person with mental illness or a substance use disorder lacks decisional capacity, physicians can determine the appropriate level of care or treatment for them. This treatment can include psychiatric admission for a 48-hour period, and/or treatment with medication if the person is diagnosed as dangerous to themselves or others.

We support the use of advanced mental health care directives (HRS 327G) for people with mental illness or substance use disorders to designate an agent to make their healthcare decisions when they lack capacity. The advanced mental health directives represent the patient's wishes before they are in an acute care crisis.

We would note that an equal, or arguably more urgent, need in our state is to increase community resources to provide services for those who are in crisis but may not rise to the level of requiring inpatient care. Queen's continues to work with the Department of Health on the statewide Mental

The mission of The Queen's Health System is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

Health Emergency Worker (MHEW) program to strengthen the continuum of care for patients by effectively screening individuals in crisis and triaging them to receiving sites and services as needed.

We appreciate the intent of this bill to address the challenges facing those in our community with serious mental illness and/or substance abuse disorders. Let us make sure that in our approach to caring for the neediest in our community that we are taking a holistic view of the problem rather than a proximate one. We welcome the opportunity to continue to work with the Committee and stakeholders to further address the issues highlighted in this measure.

Thank you for the opportunity to testify on this measure.

Friday, February 3, 2023 at 9:30 AM
Via Video Conference

House Committee on Health & Homelessness

To: Representative Della Belatti, Chair
Representative Jenna Takenouchi, Vice Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

Re: **HB 1122 – Comments
Relating to Health**

My name is Michael Robinson, and I am the Vice President of Government Relations & Community Affairs at Hawai'i Pacific Health. Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

I am writing to provide COMMENTS on HB 1122 which would require patients who are seen in a hospital's emergency department or who are hospitalized on an emergency basis, and who are diagnosed with a mental illness or severe substance abuse disorder, to be assessed by a psychiatrist or advanced practice registered nurse having prescriptive authority. The psychiatrist or advanced practice registered nurse would then determine whether a surrogate or guardian is needed to make appropriate health care decisions for the patient.

We appreciate the intent of the bill and recognize the difficulties in assuring that patients suffering from a mental illness or suffering from a substance abuse disorder receive care which is both necessary and appropriate based on their disorder. Many such patients are seen in the emergency departments of the HPH hospitals. It is well known that a significant underlying challenge to this issue is psychiatric resource capacity resulting in many patients are held in the emergency department for long periods of time—sometimes hours or even days—awaiting psychiatric care. Unfortunately, not all emergency departments have access to a psychiatrist or an advanced practice registered nurse having prescriptive authority. Thus, within an emergency room or acute care setting, limiting the assessment of whether an individual is a harm to self or others to be performed to two professions – psychiatrists and advanced practice nurses -- reduces the options available to both the hospital staff as well as the patient.

Additionally, locating an individual willing to accept the role of surrogate or guardian is difficult. The language in the bill attempts to replace the patient's autonomy with a third party surrogate who has not been legally appointed by a court or appointed by the patient while the patient was of sound mind. Traditionally in emergency care, the provider determines whether the patient has the capacity to make decision at the time they are seen in the emergency department. Emergency room physicians are qualified and trained to evaluate for decisional capacity, and often do for a variety of medical reasons (e.g., delirium, cancer metastases to the brain, Traumatic Brain Injuries, etc.). If the patient does not have capacity, the provider treats the patient based on the usual standard of care under the theory of implied consent.

The requirement of assessing the patient to determine whether the patient lacks decisional capacity is not normally undertaken in the emergency department of an acute care hospital. These types of assessments are standard for inpatient psychiatric units/facilities. Hospitals may admit someone who needs psychiatric hospitalization for medical reasons, but do not provide psychiatric care. Should an emergency room physician identify an emergency medical condition that requires psychiatric treatment, arrangements are made to transfer the patient to one. If a patient is admitted for medical reasons, the patient is kept until the medical hospitalization is no longer required and then they are transferred to a psychiatric facility.

We therefore seek clarification on some practical questions & considerations not addressed in this bill:

- Is the individual required to be held until a surrogate is appointed?
- Under what time constraint is the surrogate required to be appointed and by whom?
- What if the surrogate does not agree to a Standard of Care, and declines normal treatment?
- What if the individual has no identifiable friends or family?
- What if the individual does not want a particular family member as a surrogate?

We are concerned that this bill may be redundant with other laws addressing capacity and psychiatric concerns that already exist. However, HPH is continuing to look into this complex issue and may have additional input. At this time, in order to expand the types of health care professionals who are able to assess the patient suffering from a mental illness or severe substance abuse disorder who is seen in the emergency department, we suggest that the bill be amended to allow for other qualified staff members appropriate in emergency room staffing models to also participate in this evaluation for the best interests of patient care and safety. Suggested language is provided below.

SUGGESTED AMENDMENTS to page 3 lines 1-11:

A patient who is examined in an emergency department or hospitalized on an emergency basis pursuant to this subsection, **and who is determined to be imminently dangerous to**

self or others by an emergency room physician, or psychologist or, diagnosed with a mental illness or severe substance use disorder pursuant to subsection (b), and found to be lacking decisional capacity by a psychiatrist, an emergency room physician, psychologist or advanced practice registered nurse having prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization, shall be assessed to determine whether a surrogate under section 327E-5 or a guardian under article V of chapter 560 is needed to make appropriate health care decisions for the patient.

Thank you for the opportunity to testify.

TESTIMONY OF ELLEN GODBEY CARSON ON HB 1122

I write in strong support of HB 1122.

While I write as an individual, I have served as President of Hawaii Women Lawyers, the Hawaii State Bar Association, and the Institute for Human Services. The major part of my legal career and thousands of hours of volunteer community work have been spent seeking to protect constitutional rights and the rights of vulnerable persons.

We only need to walk down our urban streets to see that we are failing to protect persons with severe mental illness. They live on our streets, rotating between the ER, jail, and the streets again in a never-ending downward cycle. Over 100 of our homeless residents die on our streets each year, at an average age of only 54. [Deaths of homeless people continue to climb on Oahu | Honolulu Star-Advertiser](#) In other words, they lose 25-30 years of their expected lifespan due to the very real dangers of living on the street without effective treatment. Many of them are so mentally ill they lack decision-making capability for life-saving medication and self-preservation.

HB 1122 will increase the likelihood that persons suffering from severe mental illness or substance abuse, who often lack decisional authority, will receive timely and appropriate care and treatment. We have miracles of modern medicine that can treat even the most severe mental illnesses. But treatment requires either actual consent or legal procedures for ordering treatment. We owe it to these individuals to provide them life-saving treatment and help restore their lucidity when they lack their own decision-making authority.

HB 1122 will help us better address these needs by requiring that patients subject to emergency hospitalization be promptly assessed to determine whether a surrogate or guardian is needed to make appropriate health care decisions for these patients. These patients need someone to help initiate a process for persons who can be legally authorized to make treatment decisions for them when they are mentally incapacitated from making those decisions themselves.

The earlier these patients can receive effective treatment, the more likely their mental illness can be stabilized and treated to help them regain decisional authority. This should also assist in diminishing the time they may need to be involuntarily hospitalized. This is a win-win for the patient and the community.

Thank you for your consideration of my testimony and helping protect our most vulnerable residents.

Ellen Godbey Carson
Honolulu, Hawaii

HB-1122

Submitted on: 2/2/2023 8:49:31 PM

Testimony for HLT on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marya Grambs	Individual	Support	Written Testimony Only

Comments:

I am writing in support of this bill. Having a guardian appointed in the E.R. can be life-saving for those individuals who are severely mentally ill and unable to take care of themselves, cycling between hospital, jail, and streets.