THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 805

JAN 23 2009

A BILL FOR AN ACT

RELATING TO HEALTH.

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

SECTION 1. The legislature finds that thimerosal is a preservative that has been used in some vaccines since the 1930s. Thimerosal consists of 49.6 per cent mercury by weight and is metabolized or degraded into ethylmercury and thiosalicylate. Mercury is a heavy metal and, like lead, is a neurotoxin. While the use of mercury-containing preservatives has declined in recent years, thimerosal is still used in certain vaccines recommended for adults, pregnant women, and children.

The Food and Drug Administration of the United States Department of Health and Human Services acknowledges that depending on the vaccine formulations used and the weight of the infant, some infants may be exposed during their first six months of life to cumulative levels of mercury that exceed Environmental Protection Agency guidelines for safe intake of methylmercury. As a precautionary measure, the Public Health Service, which includes the Food and Drug Administration, National Institutes of Health, Centers for Disease Control and

Prevention, and Health Resources and Services Administration, and the American Academy of Pediatrics issued two joint statements urging vaccine manufacturers to reduce or eliminate thimerosal in vaccines as soon as possible.

The legislature finds that because the public has the right to know about potential health risks, individuals who receive a mercury-containing vaccine should be provided written information on risks associate with the vaccine.

The purpose of this Act is to ensure informed consent prior to the administration of a vaccine containing any amount of mercury by requiring that written information about the possible effects of the use of the vaccine be provided to patients.

"§671-3 **Informed consent.** (a) The Hawaii medical board may establish standards for health care providers to follow in giving information to a patient, or to a patient's guardian or legal surrogate if the patient lacks the capacity to give an informed consent, to ensure that the patient's consent to treatment is an informed consent. The standards shall be consistent with subsection (b) and may include:

(1) The substantive content of the information to be given;

(2) The manner in which the information is to be given by the health care provider; and

(3) The manner in which consent is to be given by the patient or the patient's guardian or legal surrogate.

(b) The following information shall be supplied to the patient or the patient's guardian or legal surrogate prior to obtaining consent to a proposed medical or surgical treatment or a diagnostic or therapeutic procedure:

(1) The condition to be treated;

(2) A description of the proposed treatment or procedure;

(3) The intended and anticipated results of the proposed treatment or procedure;

(4) The recognized alternative treatments or procedures, including the option of not providing these treatments or procedures;

(5) The recognized material risks of serious complications or mortality associated with:

(A) The proposed treatment or procedure;

(B) The recognized alternative treatments or procedures; and

(C) Not undergoing any treatment or procedure; and

(6) The recognized benefits of the recognized alternative treatments or procedures.

(c) [~~On or before January 1, 1984, the~~] The Hawaii medical board shall establish standards for health care providers to follow in giving information to a patient or a patient's guardian, to ensure that the patient's consent to the performance of a mastectomy is an informed consent. The standards shall include [~~the~~]:

(1) The substantive content of the information to be given[~~, the~~];

(2) The manner in which the information is to be given by the health care provider; and [~~the~~]

(3) The manner in which consent is to be given by the patient or the patient's guardian.

The substantive content of the information to be given shall include information on the recognized alternative forms of treatment.

(d) Before January 1, 2010, the Hawaii medical board shall establish standards for health care providers to follow in providing written information to a patient or a patient's guardian, to ensure that the patient's consent to the administering of any vaccine containing more than a trace amount

of mercury is an informed consent. The information provided shall include:

(1) The condition to be treated;

(2) A description of the proposed treatment or procedure;

(3) Current information from the Centers for Disease Control and Prevention of the Department of Health and Human Services regarding claims of a correlation between the administration of vaccines containing mercury and the incidence of neurological developmental disorders;

(4) Any potential side effects of the proposed treatment or procedure;

(5) The recognized alternative treatments or procedures, including the option of not providing these treatments or procedures; and

(6) The recognized benefits of the alternative treatments or procedures.

As used in this subsection, "trace amount" means 1.25 micrograms per administered dose amount.

[~~(d)~~] (e) Nothing in this section shall require informed consent from a patient or a patient's guardian or legal surrogate when emergency treatment or an emergency procedure is

rendered by a health care provider and the obtaining of consent is not reasonably feasible under the circumstances without adversely affecting the condition of the patient's health.

[~~(e)~~] (f) For purposes of this section, "legal surrogate" means an agent designated in a power of attorney for health care or surrogate designated or selected in accordance with chapter 327E."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

INTRODUCED BY: _____

S.B. NO. 805

Report Title:
Mercury-Containing Vaccines; Disclosure; Informed Consent

Description:
Requires the Hawaii medical board to establish standards for health providers relating to required disclosure of information to patients prior to administering a vaccine with more than a trace amount of mercury.