
A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

1 SECTION 1. The purpose of this Act is to ensure that when
2 an individual with a mental health emergency is subject to
3 certain procedures and actions, sufficient notice is given to
4 designated family members, friends, and other interested persons
5 of the proceedings and actions and the individual's whereabouts.

6 SECTION 2. Chapter 334, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§334- Notice of admissions, examinations, and
10 hospitalizations. As long as the subject has capacity to make
11 health care decisions and agrees, or is given the opportunity to
12 object and does not object, or the health care provider can
13 reasonably infer from the circumstances based on the exercise of
14 professional judgment that the subject does not object, or as
15 long as the patient is incapacitated or an emergency
16 circumstance exists and the health care provider determines
17 based on the exercise of professional judgment that doing so is



1 in the best interest of the subject, notice of the person's
2 emergency admission, examination, and hospitalization under this
3 chapter may be given to at least one of the following
4 individuals in the following order of priority: the person's
5 spouse or reciprocal beneficiary, legal parents, adult children,
6 legal guardian, if one has been appointed, or if none can be
7 found, the closest adult relative."

8 SECTION 3. Section 334-60.3, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§334-60.3 Initiation of proceeding for involuntary**
11 **hospitalization.** (a) Any person may file a petition alleging
12 that a person located in the county meets the criteria for
13 commitment to a psychiatric facility. The petition shall be
14 executed subject to the penalties of perjury but need not be
15 sworn to before a notary public. The attorney general, the
16 attorney general's deputy, special deputy, or appointee
17 designated to present the case shall assist the petitioner to
18 state the substance of the petition in plain and simple
19 language. The petition may be accompanied by a certificate of
20 the licensed physician, advanced practice registered nurse, or
21 psychologist who has examined the person within two days before



1 submission of the petition, unless the person whose commitment
2 is sought has refused to submit to medical or psychological
3 examination, in which case the fact of refusal shall be alleged
4 in the petition. The certificate shall set forth the signs and
5 symptoms relied upon by the physician, advanced practice
6 registered nurse, or psychologist to determine the person is in
7 need of care or treatment, or both, and whether [~~or not~~] the
8 person is capable of realizing and making a rational decision
9 with respect to the person's need for treatment. If the
10 petitioner believes that further evaluation is necessary before
11 commitment, the petitioner may request such further evaluation.

12 (b) In the event the subject of the petition has been
13 given an examination, evaluation, or treatment in a psychiatric
14 facility within five days before submission of the petition, and
15 hospitalization is recommended by the staff of the facility, the
16 petition may be accompanied by the administrator's certificate
17 in lieu of a physician's or psychologist's certificate.

18 (c) The petition shall include the name, address, and
19 telephone number of at least one of the following individuals in
20 the following order of priority: the person's spouse or
21 reciprocal beneficiary, legal parents, adult children, and legal



1 guardian, if one has been appointed. If the subject has no
2 living spouse or reciprocal beneficiary, legal parent, adult
3 children, or legal guardian, or if none can be found, notice
4 shall be served on at least one of the subject's closest adult
5 relatives, if any can be found."

6 SECTION 4. Section 334-60.4, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§334-60.4 Notice; waiver of notice; hearing on petition;**
9 **waiver of hearing on petition for involuntary hospitalization.**

10 (a) The court shall set a hearing on the petition and notice of
11 the time and place of [~~such~~] the hearing shall be served in
12 accordance with, and to those persons specified in, a current
13 order of commitment. If there is no current order of
14 commitment, notice of the hearing shall be served personally on
15 the subject of the petition and served personally or by
16 certified or registered mail, return receipt requested,
17 deliverable to the addressee only, on the subject's spouse or
18 reciprocal beneficiary, legal parents, adult children, and legal
19 guardian, if one has been appointed. If the subject of the
20 petition has no living spouse or reciprocal beneficiary, legal
21 parent [~~and~~], adult children, or legal guardian, or if none can



1 be found, notice of the hearing shall be served on at least one
2 of the subject's closest adult relatives, if any can be found.
3 Notice of the hearing shall also be served on the public
4 defender, attorney for the subject of the petition, or other
5 court-appointed attorney as the case may be. If the subject of
6 the petition is a minor, notice of the hearing shall also be
7 served upon the person who has had the principal care and
8 custody of the minor during the sixty days preceding the date of
9 the petition if [~~such~~] that person can be found within the
10 State. Notice shall also be given to [~~such~~] other persons as
11 the court may designate.

12 (b) The notice shall include the following:

- 13 (1) The date, time, place of hearing, a clear statement of
14 the purpose of the proceedings and of possible
15 consequences to the subject; and a statement of the
16 legal standard upon which commitment is authorized;
- 17 (2) A copy of the petition;
- 18 (3) A written notice, in plain and simple language, that
19 the subject may waive [~~such a~~] the hearing by
20 voluntarily agreeing to hospitalization, or with the



- 1 approval of the court, to some other form of
2 treatment;
- 3 (4) A filled-out form indicating such waiver;
- 4 (5) A written notice, in plain and simple language, that
5 the subject or the subject's guardian or
6 representative may apply at any time for a hearing on
7 the issue of the subject's need for hospitalization,
8 if the subject has previously waived such a hearing;
- 9 (6) Notice that the subject is entitled to the assistance
10 of an attorney and that the public defender has been
11 notified of these proceedings;
- 12 (7) Notice that if the subject does not want to be
13 represented by the public defender, the subject may
14 contact the subject's own attorney; and
- 15 (8) [~~Notice, if such be the case,~~] If applicable, notice
16 that the petitioner intends to adduce evidence to show
17 that the subject of the petition is an incapacitated
18 or protected person, or both, under article V of
19 chapter 560, and whether [~~or not~~] appointment of a
20 guardian is sought at the hearing. If appointment of
21 a guardian is to be recommended, and a nominee is



1 known at the time the petition is filed, the identity
2 of the nominee shall be disclosed.

3 (c) If the subject executes and files a waiver of the
4 hearing, upon acceptance by the court following a court
5 determination that the person understands the person's rights
6 and is competent to waive them, the court shall order the
7 subject to be committed to a facility that has agreed to admit
8 the subject as an involuntary patient or, if the subject is at
9 such a facility, that the subject be retained there.

10 (d) Notice of adjournments, continuances, other delays,
11 dates of rescheduled hearings, and waivers of the hearing under
12 subsection (c) shall also be served on the individuals specified
13 in subsection (a)."

14 SECTION 5. Section 334-60.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§334-60.5 Hearing on petition.** (a) The court [~~may~~]
17 shall adjourn or continue a hearing for failure to timely notify
18 a spouse or reciprocal beneficiary, guardian, relative, or other
19 person determined by the court to be entitled to notice, or for
20 failure by the subject to contact an attorney as provided in
21 section 334-60.4(b)(7) [~~if~~] unless the court determines that the



1 interests of justice [~~sø~~] require[~~-~~] that the hearing continue
2 without adjournment or continuance.

3 (b) The time and form of the procedure incident to hearing
4 the issues in the petition shall be provided by court rule.
5 Unless the hearing is waived, the judge shall hear the petition
6 as soon as possible and no later than ten days after the date
7 the petition is filed unless a reasonable delay is sought for
8 good cause shown by the subject of the petition, the subject's
9 attorney, or those persons entitled to receive notice of the
10 hearing under section 334-60.4.

11 (c) The subject of the petition shall be present at all
12 hearings unless the subject waives the right to be present, is
13 unable to attend, or creates conditions [~~which~~] that make it
14 impossible to conduct the hearing in a reasonable manner as
15 determined by the judge. A waiver is valid only upon acceptance
16 by the court following a judicial determination that the subject
17 understands the subject's rights and is competent to waive them,
18 or is unable to participate. If the subject is unable to
19 participate, the judge shall appoint a guardian ad litem or a
20 temporary guardian as provided in article V of chapter 560, to
21 represent the subject throughout the proceedings.



1 (d) Hearings may be held at any convenient place within
2 the circuit. The subject of the petition, any interested party,
3 or the court on its own motion may request a hearing in another
4 circuit because of convenience to the parties, witnesses, or the
5 court or because of the individual's mental or physical
6 condition.

7 (e) The attorney general, the attorney general's deputy,
8 special deputy, or appointee shall present the case for hearings
9 convened under this chapter, except that the attorney general,
10 the attorney general's deputy, special deputy, or appointee need
11 not participate in or be present at a hearing whenever a
12 petitioner or some other appropriate person has retained private
13 counsel who will be present in court and will present to the
14 court the case for involuntary hospitalization.

15 (f) Counsel for the subject of the petition shall be
16 allowed adequate time for investigation of the matters at issue
17 and for preparation, and shall be permitted to present the
18 evidence that the counsel believes necessary to a proper
19 disposition of the proceedings, including evidence as to
20 alternatives to inpatient hospitalization.



1 (g) No individual may be found to require treatment in a
2 psychiatric facility unless at least one physician, advanced
3 practice registered nurse, or psychologist who has personally
4 examined the individual testifies in person at the hearing.
5 This testimony may be waived by the subject of the petition. If
6 the subject of the petition has refused to be examined by a
7 licensed physician, advanced practice registered nurse, or
8 psychologist, the subject may be examined by a court-appointed
9 licensed physician, advanced practice registered nurse, or
10 psychologist. If the subject refuses and there is sufficient
11 evidence to believe that the allegations of the petition are
12 true, the court may make a temporary order committing the
13 subject to a psychiatric facility for a period of [~~not~~] no more
14 than five days, for the purpose of a diagnostic examination and
15 evaluation. The subject's refusal shall be treated as a denial
16 that the subject is mentally ill or suffering from substance
17 abuse. Nothing in this section[~~, however,~~] shall limit the
18 individual's privilege against self-incrimination.

19 (h) The subject of the petition in a hearing under this
20 section has the right to secure an independent medical or
21 psychological evaluation and present evidence thereon.



1 (i) If after hearing all relevant evidence, including the
2 result of any diagnostic examination ordered by the court, the
3 court finds that an individual is not a person requiring
4 medical, psychiatric, psychological, or other rehabilitative
5 treatment or supervision, the court shall order that the
6 individual be discharged if the individual has been hospitalized
7 prior to the hearing.

8 (j) If the court finds that the criteria for involuntary
9 hospitalization under section 334-60.2(1) has been met beyond a
10 reasonable doubt and that the criteria under sections
11 334-60.2(2) and 334-60.2(3) have been met by clear and
12 convincing evidence, the court may issue an order to any law
13 enforcement officer to deliver the subject to a facility that
14 has agreed to admit the subject as an involuntary patient, or if
15 the subject is already a patient in a psychiatric facility,
16 authorize the facility to retain the patient for treatment for a
17 period of ninety days unless sooner discharged. The court may
18 also authorize the involuntary administration of medication,
19 where the subject has an existing order for assisted community
20 treatment, issued pursuant to part VIII of this chapter,
21 relating to assisted community treatment, and in accordance with



1 the treatment prescribed by that prior order. Notice of the
2 subject's commitment and the facility name and location where
3 the subject will be committed shall be provided to those persons
4 entitled to notice pursuant to section 334-60.4. An order of
5 commitment shall specify which of those persons served with
6 notice pursuant to section 334-60.4, together with such other
7 persons as the court may designate, shall be entitled to receive
8 any subsequent notice of intent to discharge, transfer, or
9 recommit. The court shall forward to the Hawaii criminal
10 justice data center all orders of involuntary civil commitment
11 or information from all orders of involuntary civil commitment,
12 as requested by the Hawaii criminal justice data center, which
13 in turn shall forward the information to the Federal Bureau of
14 Investigation, or its successor agency, for inclusion in the
15 National Instant Criminal Background Check System database. The
16 orders or information shall also be maintained by the Hawaii
17 criminal justice data center for disclosure to and use by law
18 enforcement officials for the purpose of firearms permitting or
19 registration pursuant to chapter 134. This subsection shall
20 apply to all involuntary civil commitments without regard to the
21 date of the involuntary civil commitment.



1 (k) The court may find that the subject of the petition is
2 an incapacitated or protected person, or both, under article V
3 of chapter 560, and may appoint a guardian or conservator, or
4 both, for the subject under the terms and conditions as the
5 court shall determine.

6 (l) Individuals entitled to notice are also entitled to be
7 present in the courtroom for the hearing and to receive a copy
8 of the hearing transcript or recording, unless the court
9 determines that the interests of justice require otherwise."

10 SECTION 6. Section 334-60.7, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) [~~For civil commitments that result directly from~~
13 ~~legal proceedings under chapters 704 and 706, when]~~ When the
14 administrator or attending physician of a psychiatric facility
15 contemplates discharge of an involuntary patient because of
16 expiration of the court order for commitment or because the
17 patient is no longer a proper subject for commitment, as
18 determined by the criteria for involuntary hospitalization in
19 section 334-60.2, the administrator or attending physician shall
20 provide notice of intent to discharge, or if the patient
21 voluntarily agrees to further hospitalization, the administrator



1 shall provide notice of the patient's admission to voluntary
2 inpatient treatment. The following requirements and procedures
3 shall apply:

- 4 (1) The notice and a certificate of service shall be filed
5 with the family court and served on those persons whom
6 the order of commitment specifies as entitled to
7 receive notice, by mail at the person's last known
8 address. Notice shall also be sent to the prosecuting
9 attorney of the county from which the person was
10 originally committed, by facsimile or electronically,
11 for the sole purpose of victim notification;
- 12 (2) Any person specified as entitled to receive notice may
13 waive this right in writing with the psychiatric
14 facility;
- 15 (3) If no objection is filed within five calendar days of
16 mailing the notice, the administrator or attending
17 physician of the psychiatric facility shall discharge
18 the patient or accept the patient for voluntary
19 inpatient treatment;
- 20 (4) If any person specified as entitled to receive notice
21 files a written objection, with a certificate of



1 service, to the discharge or to the patient's
2 admission to voluntary inpatient treatment on the
3 grounds that the patient is a proper subject for
4 commitment, the family court shall conduct a hearing
5 as soon as possible, prior to the termination of the
6 current commitment order, to determine if the patient
7 still meets the criteria for involuntary
8 hospitalization in section 334-60.2. The person
9 filing the objection shall also notify the psychiatric
10 facility by telephone on the date the objection is
11 filed;

12 (5) If the family court finds that the patient does not
13 meet the criteria for involuntary hospitalization in
14 section 334-60.2, the court shall issue an order of
15 discharge from the commitment; and

16 (6) If the family court finds that the patient does meet
17 the criteria for involuntary hospitalization in
18 section 334-60.2, the court shall issue an order
19 denying discharge from the commitment."

20 SECTION 7. Section 334-82, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§334-82 Order to show cause; guardian ad litem.**

2 Immediately upon receipt of a request, the court shall issue an
3 order to show cause directed to the administrator of the
4 facility and commanding the administrator to show cause at a
5 date and time certain [~~not~~] no later than five days thereafter
6 why the patient should not be discharged [~~forthwith.~~]
7 immediately. A copy of the request shall be attached to the
8 order to show cause. The form of the order to show cause shall
9 be prescribed and supplied free of charge by the court. The
10 order to show cause shall issue without cost and may be served
11 as any other civil process or by any responsible person
12 appointed by the court for that purpose. At any stage of the
13 proceedings, the court may appoint a guardian ad litem for the
14 patient. The guardian ad litem may be a member of the bar of
15 the court or any other responsible person. Service on the
16 administrator may be effected by leaving certified copies of the
17 order to show cause and request at the facility with any person
18 exercising authority. Notice of the order to show cause and the
19 hearing date, and any adjournments, continuances, other delays,
20 and dates of rescheduled hearings shall be provided to those
21 persons entitled to notice pursuant to section 334-60.4."



1 SECTION 8. Section 334-84, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§334-84 Order.** If it is determined that the admission of
4 the patient is regular and that the patient needs continued
5 hospitalization, the court shall issue an order authorizing the
6 detention of the patient at the facility. If it is determined
7 that the admission of the patient is not regular or that the
8 patient does not need continued hospitalization, the court shall
9 issue an order requiring the immediate discharge of the patient
10 from the facility. Notice of the detention or discharge shall
11 be provided to those persons entitled to notice pursuant to
12 section 334-60.4."

13 SECTION 9. Section 334-123, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§334-123 Initiation of proceeding for assisted community**
16 **treatment.** (a) Any interested party may file a petition with
17 the family court alleging that another person meets the criteria
18 for assisted community treatment. The petition shall state:
19 (1) Each of the criteria [~~numbered (1)~~] under section
20 334-121(1) through (7) for assisted community
21 treatment [~~, as set out in section 334-121~~];



1 (2) Petitioner's good faith belief that the subject of the
2 petition meets each of the criteria [~~numbered (1)~~]
3 under section 334-121(1) through (7) [~~set forth in~~
4 ~~section 334-121~~];

5 (3) Facts [~~which~~] that support the petitioner's good faith
6 belief that the subject of the petition meets each of
7 the criteria [~~numbered (1)~~] under section 334-121(1)
8 through (7) [~~set forth in section 334-121~~]; and

9 (4) That the subject of the petition is present within the
10 county where the petition is filed.

11 The hearing on the petition need not be limited to the
12 facts stated in the petition. The petition shall be executed
13 subject to the penalties of perjury.

14 (b) The petition may be accompanied by a certificate of a
15 licensed psychiatrist who has examined the subject of the
16 petition within twenty calendar days prior to the filing of the
17 petition. For purposes of the petition, an examination shall be
18 considered valid so long as the licensed psychiatrist has
19 obtained enough information from the subject of the petition to
20 reach a diagnosis of the subject of the petition, and to express



1 a professional opinion concerning the same, even if the subject
2 of the petition is not fully cooperative.

3 (c) The petition shall include the name, address, and
4 telephone number of at least one of the following individuals in
5 the following order of priority: the subject of the petition's
6 spouse or reciprocal beneficiary, legal parents, adult children,
7 and legal guardian, if one has been appointed. If the subject
8 has no spouse or reciprocal beneficiary, legal parent, adult
9 children, or legal guardian, or if none can be found, the
10 petition shall include the name, address, and telephone number
11 of at least one of the subject's closest adult relatives, if any
12 can be found."

13 SECTION 10. Section 334-125, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Notice of the hearing shall be:

16 (1) Served personally on the subject of the petition
17 pursuant to family court rules;

18 (2) Served personally or by certified or registered mail,
19 return receipt requested, deliverable to the addressee
20 only, to as many as are known to the petitioner of the
21 subject's spouse or reciprocal beneficiary, legal



1 parents, adult children, and legal guardian, if one
2 has been appointed[~~+~~]. If the subject of the petition
3 has no spouse or reciprocal beneficiary, legal parent,
4 adult children, or legal guardian, or if none can be
5 found, notice of the hearing shall be served on at
6 least one of the subject's closest adult relatives, if
7 any can be found;

8 (3) Served on the public defender, attorney for the
9 subject of the petition, or other court-appointed
10 attorney as applicable; and

11 (4) Given to [~~such~~] other persons as the court may
12 designate."

13 SECTION 11. Section 334-126, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending subsection (a) to read:

16 "(a) The court [~~may~~] shall adjourn or continue a hearing
17 for failure to timely notify a person entitled to be notified[~~+~~]
18 unless the court determines that the interests of justice
19 require that the hearing continue without adjournment or
20 continuance."

21 2. By amending subsection (d) to read:



1 "(d) The hearing shall be closed to the public, unless the
2 subject of the petition requests otherwise. Individuals
3 entitled to notice are entitled to be present in the courtroom
4 for the hearing and to receive a copy of the hearing transcript
5 or recording, unless the court determines that the interests of
6 justice require otherwise."

7 SECTION 12. Section 334-127, Hawaii Revised Statutes, is
8 amended by amending subsections (a) and (b) to read as follows:

9 "(a) If after hearing all relevant evidence, including the
10 results of any diagnostic examination ordered by the family
11 court, the family court finds that the subject of the petition
12 does not meet the criteria for assisted community treatment, the
13 family court shall dismiss the petition. Notice of the
14 dismissal shall be provided to those persons entitled to notice
15 pursuant to section 334-125.

16 (b) If after hearing all relevant evidence, including the
17 results of any diagnostic examination ordered by the family
18 court, the family court finds that the criteria for assisted
19 community treatment under section 334-121(1) have been met
20 beyond a reasonable doubt and that the criteria under section
21 334-121(2) to 334-121(7) have been met by clear and convincing



1 evidence, the family court shall order the subject to obtain
2 assisted community treatment for a period of [~~not~~] no more than
3 one year. The written treatment plan submitted pursuant to
4 section 334-126(h) shall be attached to the order and made a
5 part of the order.

6 If the family court finds by clear and convincing evidence
7 that the beneficial mental and physical effects of recommended
8 medication outweigh the detrimental mental and physical effects,
9 if any, the order may authorize types or classes of medication
10 to be included in treatment at the discretion of the treating
11 psychiatrist.

12 The court order shall also state who should receive notice
13 of intent to discharge early in the event that the treating
14 psychiatrist determines, prior to the end of the court ordered
15 period of treatment, that the subject should be discharged early
16 from assisted community treatment.

17 Notice of the order shall be provided to those persons
18 entitled to notice pursuant to section 334-125."

19 SECTION 13. Section 334-129, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "**§334-129 Failure to comply with assisted community**
2 **treatment.** (a) A treating psychiatrist may prescribe or
3 administer to the subject of the order reasonable and
4 appropriate medication or medications, if specifically
5 authorized by the court order, and treatment [~~which~~] that is
6 consistent with accepted medical standards and the family court
7 order, including the written treatment plan submitted pursuant
8 to section 334-126(h).

9 (b) No subject of the order shall be physically forced to
10 take medication under a family court order for assisted
11 community treatment unless the subject is within an emergency
12 department or admitted to a hospital, subsequent to the date of
13 the current assisted community treatment order.

14 (c) A subject may be transported to a designated mental
15 health program, or a hospital emergency department, for failure
16 to comply with an order for assisted community treatment via the
17 following methods:

- 18 (1) By an interested party with the consent of the subject
19 of the order; or
20 (2) In accordance with section 334-59.



1 (d) The designated mental health program's treating
2 psychiatrist or psychiatrist's designee shall make all
3 reasonable efforts to solicit the subject's compliance with the
4 prescribed treatment. If the subject fails or refuses to comply
5 after the efforts to solicit compliance, the treating
6 psychiatrist shall assess whether the subject of the order meets
7 criteria for admission to a psychiatric facility under part IV
8 of this chapter, and proceed with the admission pursuant to
9 section 334-59(a)(2) or (3); provided that the refusal of
10 treatment shall not, by itself, constitute a basis for
11 involuntary hospitalization.

12 (e) Notice of any transport or admission under this
13 section shall be provided to those persons whom the order for
14 assisted community treatment specifies is entitled to receive
15 notice."

16 SECTION 14. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 15. This Act shall take effect on January 7, 2059.

19



Report Title:

Mental Health; Admission; Examination; Treatment; Notice; Hearings; Involuntary Hospitalization; Assisted Community Treatment

Description:

Entitles designated family members and other interested persons of a person having a mental health emergency to: notice of emergency admission, examination, and hospitalization. Entitles designated family members and other interested persons to the option to be present in the courtroom for a hearing on a petition for involuntary hospitalization or assisted community treatment and the option to receive copies of hearing transcripts or recordings, unless the court determines that the interests of justice require otherwise. Requires notice of discharge and voluntary inpatient treatment when forensic and non-forensic patients are civilly committed to individuals specified in the order of commitment. Requires the court to adjourn or continue a hearing on a petition for involuntary hospitalization or assisted community treatment for failure to timely notify designated persons, with certain exceptions. Takes effect on 1/7/2059. (SD2)

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

