

ACT 119

H.B. NO. 1663

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1991 the United States Department of Justice filed suit against the State of Hawaii in the United States District Court for the District of Hawaii for violations of the constitutional rights of patients at the Hawaii state hospital (HSH). The suit was brought under the authority of the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. section 1997 et seq. Concurrently, the State of Hawaii and the United States entered into a settlement agreement to correct the deficiencies at HSH, and the settlement agreement became an order of the federal court. In January, 1995, the United States District Court found the State in contempt of court for failure to achieve important requirements.

Under court order, the United States and the State of Hawaii negotiated a stipulation and a detailed remedial plan designed to solve these problems. In part to address the problems caused by inadequate staffing, the stipulation and plan included measures to provide appropriate services in the community for HSH patients who did not require hospital-level care but whose only barrier to discharge was lack of an appropriate community placement.

At a status conference on February 1, 1999, the United States District Court stated that HSH is still "grossly out of compliance" with significant requirements of its orders, most notably the requirement that the State provide adequate treatment and treatment planning for all HSH patients. The court ordered that the State of Hawaii and the United States Department of Justice, through a five-member compli-

ance committee, jointly identify and implement solutions to all outstanding issues of material significance for compliance, and that by June 15, 1999, the State "shall have in place programs designed to rectify each and every one of the material issues identified necessary to bring the facilities and services into compliance with the requirements of the court orders by December 20, 1999." The court has also stated that unless the State takes corrective action in accordance with the compliance committee's plans by December 20, 1999, the court will appoint a special master to assume control of the hospital and the State's mental health programs and services and to take all necessary corrective action, all at the State's expense.

To avoid this drastic and very costly outcome and to maintain control of its services and facilities, the State must decisively address the needs of its people with serious mental illness who are hospitalized at HSH and those who may require hospitalization in the future. The State must bring its services into conformance with standards of best practice consistent with the national trend toward providing a continuum of care in a variety of settings. From the perspective of both cost control and quality of service, it is clear both from the experience of other jurisdictions and from HSH's own struggles that the best approach is to provide certain necessary services through public or private providers in the community. Studies further find that most persons with mental illness should remain in their communities because treatment is usually most effective in community settings.

The department of health must reconfigure the functions of the current HSH within a comprehensive community-based program of mental health treatment, rehabilitation, and housing services, including appropriately secure settings for those who remain a danger to others. The heightened level of acuity and services needed by individuals hospitalized at HSH and by individuals who otherwise would be admitted to the hospital are appropriately provided through public or private contracts in the community. Because the private sector is already capable of furnishing some care that meets the standards required by CRIPA, it makes sense for the State to avail itself of those services. In this manner, the State may avoid both losing control over its mental health services system and incurring the considerable and uncontrollable expense of a federally-appointed master.

The purpose of this Act is to:

- (1) Transition HSH to a secure psychiatric rehabilitation facility for individuals who require intensive therapeutic treatment and rehabilitation, including appropriate acute care services;
- (2) Authorize the director of health to privatize functions currently performed at HSH as appropriate to the clinical needs of the population served in the least restrictive setting; and
- (3) Authorize the department of health to provide for comprehensive community-based programs and services for individuals discharged from HSH in accordance with this Act or individuals who might otherwise have been admitted to HSH. These programs, services, and individuals shall be reviewed and monitored by the department of health.

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

"§334-A Contracts for facilities and services. (a) The director may contract with any person for:

- (1) The development or operation of private in-state psychiatric facilities;
- (2) The placement of patients in existing private or public psychiatric facilities; and
- (3) The provision of:

- (A) Secure psychiatric rehabilitation services;
- (B) Crisis intervention and stabilization services;
- (C) Intensive treatment and wraparound services;
- (D) Diversion services;
- (E) Special treatment facilities or therapeutic living programs as defined in section 334-1;
- (F) Case management services;
- (G) Housing services; and
- (H) Other mental health treatment and rehabilitation services.

(b) The department may operate or contract for a secure psychiatric rehabilitation program for individuals who require intensive therapeutic treatment and rehabilitation in a secure setting. The services authorized by this section shall be for persons:

- (1) Involuntarily hospitalized under this chapter for whom the services cannot be reimbursed, covered, or provided by an insurer, plan, or other person;
- (2) Committed to the custody of the director under chapter 704; and
- (3) Appropriately hospitalized under chapter 704 or 706.

The director shall be responsible for the appropriate placement of all persons placed in facilities or services contracted for or operated by the director under paragraphs (1) through (3).

Any such person placed in a facility or services contracted for or operated by the director who leaves or remains away from the facility or services, without permission, may be apprehended and returned to the facility or services by any employee of the department or by any police officer without any warrant or further proceeding.

(c) The department shall:

- (1) See that patients who receive services under contract or provided directly by the department pursuant to subsection (a) receive the care and treatment for which the department has contracted or for which appropriate services are provided directly by the department;
- (2) Make periodic reviews of the records of each person committed to the director's custody or hospitalized pursuant to this chapter, chapter 704, or chapter 706;
- (3) In suitable cases, discharge or place on authorized absence persons committed to the director's custody or hospitalized pursuant to this chapter, chapter 704, or chapter 706; and
- (4) Keep a medical record of each person committed to the director's custody or hospitalized pursuant to this chapter, chapter 704, or chapter 706."

SECTION 3. Section 334-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of health within the limits of available funds within the designated programs, shall promote and provide for the establishment and operation of a community-based mental health system responsive to the needs of persons of all ages, ethnic groups, and geographical areas of the State, reflective of an appropriate distribution of resources and services, and monitored and evaluated in terms of standards, goal attainment, and outcomes. The elements of the system shall be defined by departmental rules recognizing the need for at least the following services:

- (1) Informational and educational services to the general public and to lay and professional groups;

- (2) Collaborative and cooperative services with public and private agencies and groups for the prevention and treatment of mental or emotional disorders and substance abuse and rehabilitation of patients;
- (3) Consultation services to the judiciary, to educational institutions, and to health and welfare agencies;
- (4) Case management, outreach, and follow-up services;
- (5) Emergency crisis and noncrisis intervention services accessible to residents of all service areas;
- (6) Community-based, relevant, and responsive outpatient services;
- (7) Community residential care comprising a comprehensive range of small, homelike, and appropriately staffed treatment and rehabilitation facilities;
- (8) Short-term psychiatric [hospitalization] treatment, preferably in facilities where access to other health and medical services are readily available;
- (9) Intensive psychiatric [hospitalization] treatment for patients in need of long-term, highly structured, or highly specialized care and treatment under section 334-A, and provision of appropriate community resources;
- (10) Training programs, activities, and staffing standards for the major mental health disciplines and ancillary services; and
- (11) Rehabilitative services for hospital and community-based individuals who have experienced short- or long-term mental or emotional disorders and substance abuse."

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

"§334-4 Personnel for mental health program. The director shall appoint professional and nonprofessional staff as the director deems necessary to carry out the state mental health program and for which appropriations are available. Positions for psychiatrists are exempted from chapters 76 and 77. The director may employ psychiatrists as needed by the department on a contractual basis, subject to the approval of the governor. The director may appoint an administrator, three associate [hospital] administrators, a director of psychosocial rehabilitation, a chief of the department of nursing, a risk manager, a patients' rights advisor, and a facilities plant engineer for the state hospital or a secure psychiatric rehabilitation facility established pursuant to [section 334-31] this chapter and these positions shall be exempt from chapters 76 and 77."

SECTION 5. Section 334-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Every person hospitalized at a psychiatric facility or receiving treatment services through a community mental health center under the jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its revenues from the general fund of the State, or pursuant to contract with the director under section 334-A, shall be liable for the expenses attending their reception, maintenance, and treatment and any property not exempt from execution belonging to the person shall be subject to sequestration for the payment of the expenses. Every parent or legal guardian of a patient who is a minor and every spouse or reciprocal beneficiary of a patient shall be liable for the expenses attending the reception, maintenance, and treatment of that minor child or spouse or reciprocal beneficiary who is hospitalized at a psychiatric facility or receiving treatment through a community mental health center under the

jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its revenues from the general fund of the State[.], or pursuant to contract with the director under section 334-A.”

SECTION 6. Section 334-74, Hawaii Revised Statutes, is amended to read as follows:

“§334-74 **Transfer of residents of correctional facilities.** If any resident of a state correctional facility is in need of [hospital] acute psychiatric treatment for [a primary diagnosis of] mental illness, the director of public safety or the officer in charge of the correctional facility may file with the director [of health] an application for the transfer of the resident to [the state hospital,] a facility operated by the department of health or at which the director of health contracts for services, together with the certificate of a psychiatrist or psychologist employed by [either] the department [of health, or the department of public safety] showing the need for [hospital] such treatment, and, upon approval of the application by the director [of health], the official having custody of the resident shall transfer the resident to the [state hospital] facility operated by the department or at which the director contracts for care and treatment. The official effecting the transfer of the resident shall keep the [administrator of the state hospital] director informed of the maximum period of commitment of the resident to the director of public safety, and, if the continued [hospitalization] care of the resident beyond the expiration of the period is deemed necessary, the [administrator of the state hospital] director shall institute the [admission] procedures required to detain the resident as a patient notwithstanding the resident’s release from the state correctional facility; provided that a judicial hearing pursuant to sections 334-60.2 to 334-60.7 be held by the same circuit court that sentenced the resident. In the event that discharge from the [hospital] facility operated by the department or at which the director contracts for services occurs before the expiration of the maximum period of commitment or confinement, the resident shall be returned to the appropriate state correctional facility.

As used in this section, “resident” means any person serving a sentence in a state correctional facility or any child or minor detained in a state correctional facility.”

SECTION 7. Section 334-103, Hawaii Revised Statutes, is amended to read as follows:

“§334-103 **Program elements.** The following shall be the program elements of the system. These shall be designed to provide, at every level, alternatives to institutional settings. Applicants applying to operate program elements shall show how each of these elements works with the current programs in the community the facility will serve. Applicants may apply for operation under the following program elements:

- (1) A short-term crisis residential alternative to hospitalization for individuals experiencing an acute episode or situational crisis. The program shall be available for admissions twenty-four hours a day, seven days a week. The primary focus of this element shall be on reduction of the crisis, stabilization, diagnostic evaluation, and assessment of the person’s existing support system, including recommendations for referrals upon discharge. This service in the program shall be designed for persons who would otherwise be referred to an acute inpatient psychiatric unit;

- (2) A long-term residential treatment program for clients who would otherwise be living marginally in the community with little or no service support, and who would return many times to the hospital for treatment. It also will serve those who are referred to, and maintained in, state [hospitals] facilities or nursing homes, or private or public facilities or programs under contract with the director pursuant to section 334-A, because they require long-term, intensive support. This service shall be designed to provide a rehabilitation program for the so-called "chronic" patient who needs long-term support in order to develop independent living skills. This program goes beyond maintenance to provide an active rehabilitation focus for these individuals;
- (3) A transitional residential program designed for persons who are able to take part in programs in the general community, but who, without the support of counseling, as well as the therapeutic community, would be at risk of returning to the hospital. These programs may employ a variety of staffing patterns and are for persons who are expected to move toward a more independent living setting. The clients shall be expected to play a major role in the functioning of the household, and shall be encouraged to accept increasing levels of responsibility, both in the residential community, and in the community as [[a]] whole. Residents are required to be involved in daytime activities outside of the facility which are relevant to their personal goals and conducive to their achieving more self-sufficiency; or
- (4) A semisupervised, independent, but structured living arrangement for persons who do not need the intensive support of the system elements of paragraph (1), (2), or (3), but who, without some support and structure, are at risk of requiring hospitalization. The small cooperative housing units shall function as independent households with direct linkages to staff support in case of emergencies, as well as for regular assessment and evaluation meetings. Individuals may use satellite housing as a transition to independent living, or may remain in this setting indefinitely in order to avoid the need for more intensive settings. This element is for persons who only need minimum professional or paraprofessional support in order to live in the community. These units should be as normative as the general living arrangements in the communities in which they are developed."

SECTION 8. Chapter 334, part III, Hawaii Revised Statutes, is repealed.

SECTION 9. Any permanent employee of the department of health who is not exempt from civil service under section 76-16, Hawaii Revised Statutes, and who is transferred to a new or different position because of a contract made by the director of health pursuant to the authority conferred by section 2 of this Act, shall be a "covered employee" under part IV of Act 230, Session Laws of Hawaii 1998, and may elect to participate in any applicable voluntary severance package offered by the State. In the event such an employee obtains continued employment in another position, the employee, position, and appropriated salary may be transferred to another department or another program within the department of health.

SECTION 10. All appropriations heretofore made to or held by the department of health to compensate an employee transferred to another department or to another program of the department of health, shall be transferred to the program or department to which the employee is transferred.

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SECTION 11. In codifying the new section added to chapter 334, Hawaii Revised Statutes, by section 2 of this Act, the Revisor of Statutes shall substitute the appropriate section number for the letter used in the section designation of the Act.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 13. This Act shall take effect upon its approval; provided that section 8 shall take effect on July 1, 2000.

(Approved June 25, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.