

## ACT 114

H.B. NO. 651

A Bill for an Act Relating to Informed Consent.

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

SECTION 1. Section 432E-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In order to inform enrollees fully, the provider shall:

- (1) Discuss all treatment options with an enrollee [~~and include~~], as provided by section 671-3, including the option of no treatment at all;
- (2) Ensure that persons with disabilities have an effective means of communication with the provider and other members of the managed care plan; and
- (3) Discuss all risks, benefits, and consequences to treatment and nontreatment[-], as provided by section 671-3(b).’”

SECTION 2. Section 671-3, Hawaii Revised Statutes, is amended to read as follows:

“~~§671-3 Informed consent[; board of medical examiners standards].~~ (a) The board of medical examiners[~~; insofar as practicable, shall~~] 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 [~~is not competent~~] 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 [the].<sup>1</sup>

- (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[-] or legal surrogate.

(b) ~~[If the standards established by the board of medical examiners include provisions which are designed to reasonably inform a patient, or a patient's guardian, of:]~~ 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 [being] to be treated;~~
  - (2) ~~[The nature and character]~~ A description of the proposed treatment or [surgical] procedure;
  - (3) ~~The intended and anticipated results[;] of the proposed treatment or procedure;~~
  - (4) ~~The recognized [possible alternative forms of treatment;] alternative treatments or procedures, including the option of not providing these treatments or procedures; [and~~
  - (5) ~~The recognized serious possible risks, complications, and anticipated benefits involved in the treatment or surgical procedure, and in the recognized possible alternative forms of treatment, including nontreatment,~~
- ~~then the standards shall be admissible as evidence of the standard of care required of the health care providers.]~~

- (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 board of medical examiners 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 substantive content of the information to be given, the manner in which the information is to be given by the health care provider and 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) 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 [surgical] 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) 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. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 2004.

(Approved June 2, 2003.)

**Note**

- 1. Colon should be underscored.