

A Bill for an Act Relating to Orders for Treatment Over Objection.

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

SECTION 1. The legislature finds that the initiation of treatment for patients admitted to the Hawaii state hospital needs to be expedient to address patients' psychiatric symptoms and protect the safety of the patient and others.

The legislature further finds that the Hawaii state hospital is used primarily for forensic commitments, and that addressing patients' psychiatric symptoms quickly at the initiation of treatment will help maintain a safe and secure therapeutic environment for patients and staff as well as have a positive impact on the patients' length of stay. Addressing the committed person's psychiatric symptoms quickly helps maintain a safe and secure environment for the individual involved and persons who surround the committed person.

The legislature notes that the current method to obtain an authorization to provide treatment over a patient's objection is by a judicial hearing. Although dependent on circumstances, the average time between the petition and judicial hearing is nearly seventeen days. Other states have addressed the variability and length of time before the judicial hearing by developing a nonjudicial, administrative process to review and authorize requests for treatment despite a patient's objections.

The purpose of this Act is to permit an administrative order to overcome a patient's objection to psychiatric treatment, establish criteria for issuance of the administrative order, and establish criteria for an administrative authorization process to determine whether the administrative order should be issued.

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

"PART . ADMINISTRATION OF TREATMENT OVER THE PATIENT'S OBJECTION

§334-A Criteria for issuance of court or administrative order for treatment over the patient's objection. (a) A patient who has been committed to a psychiatric facility for involuntary hospitalization or who is in the custody of the director and residing in a psychiatric facility may be ordered to receive treatment over the patient's objection, including the taking or application of medication, if the court, or administrative panel through the administrative authorization process established pursuant to section 334-B, finds that:

- (1) The patient suffers from a physical or mental disease, disorder, or defect;
- (2) The patient is imminently dangerous to self or others;
- (3) The proposed treatment is medically appropriate; and
- (4) After considering less intrusive alternatives, treatment is necessary to forestall the danger posed by the patient.

(b) For the purposes of this section, "imminently dangerous to self or others" means that, without intervention, the person will likely become dangerous to self or dangerous to others within the next forty-five days.

§334-B Criteria for administrative authorization process. (a) A patient who is in the custody of the director and in a psychiatric facility may be ordered

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to receive medical treatment over the patient's objection through an administrative authorization process that includes the following due process safeguards:

- (1) The facility shall give notice to the patient of the authorization process and the reasons for initiating the process;
 - (2) The administrative panel shall consist of three members with relevant clinical training and experience, and who are not involved with the current treatment of the patient;
 - (3) The patient shall have the right to attend the hearing, receive assistance from an advisor, cross examine witnesses, and present testimony, exhibits, and witnesses; and
 - (4) The patient shall have the right to appeal the decision of the administrative panel.
- (b) The administrative process described by this section is exempt from the contested case requirements of sections 91-8.5 to 91-15.
- (c) The department may adopt rules, pursuant to chapter 91, to effectuate this part."

SECTION 3. Section 334E-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any patient in a psychiatric facility shall be afforded rights[;], and any psychiatric facility shall provide the rights to all patients; provided that when a patient is not able to exercise the patient's rights, the patient's legal guardian or legal representative shall have the authority to exercise the same on behalf of the patient. The rights shall include[;] but not be limited to[;] the following:

- (1) Access to written rules and regulations with which the patient is expected to comply;
- (2) Access to the facility's grievance procedure or to the department of health as provided in section 334-3;
- (3) Freedom from reprisal;
- (4) Privacy, respect, and personal dignity;
- (5) A humane environment;
- (6) Freedom from discriminatory treatment based on race, color, creed, national origin, age, and sex;
- (7) A written treatment plan based on the individual patient;
- (8) Participation in the planning of the patient's treatment plan;
- (9) Refusal of treatment except in emergency situations or ~~[where a court order exists;]~~ when a court order or an administrative order pursuant to chapter 334, part . has been issued;
- (10) Refusal to participate in experimentation;
- (11) The choice of physician if the physician chosen agrees;
- (12) A qualified, competent staff;
- (13) A medical examination before initiation of non-emergency treatment;
- (14) Confidentiality of the patient's records;
- (15) Access to the patient's records;
- (16) Knowledge of rights withheld or removed by a court or by law;
- (17) Physical exercise and recreation;
- (18) Adequate diet;
- (19) Knowledge of the names and titles of staff members with whom the patient has frequent contact;
- (20) The right to work at the facility and fair compensation for work done; provided that work is available and is part of the patient's treatment plan;

- (21) Visitation rights, unless the patient poses a danger to self or others; provided that where visitation is prohibited, the legal guardian or legal representative shall be allowed to visit the patient upon request;
- (22) Uncensored communication;
- (23) Notice of and reasons for an impending transfer;
- (24) Freedom from seclusion or restraint, except:
 - (A) When necessary to prevent injury to self or others; ~~or~~
 - (B) When part of the treatment plan; or
 - (C) When necessary to preserve the rights of other patients or staff;
- (25) Disclosure to a court, at an involuntary civil commitment hearing, of all treatment procedures which have been administered prior to the hearing; and
- (26) Receipt by the patient and the patient's guardian or legal guardian, if the patient has one, of this enunciation of rights at the time of admission."

SECTION 4. The department of health and the department of public safety shall work collaboratively to identify and develop policies, procedures, staffing requirements, and recommendations for legislation to implement a process, based on best practices from other jurisdictions, that shall be available to the department of public safety to obtain administrative orders to overcome the objection of a patient subject to the jurisdiction of the department of public safety to psychiatric treatment, establish criteria for issuance of the administrative order, and establish criteria for an administrative authorization process to determine whether the administrative order should be issued.

SECTION 5. The department of health shall report annually to the legislature on the department's progress in implementing the administrative process established by this Act, the department's utilization of the administrative process, and the department's utilization of the assisted community treatment process established pursuant to part VIII of chapter 334, Hawaii Revised Statutes. The department shall submit the reports required by this section annually, no later than twenty days prior to the convening of each regular session. The department shall submit its initial report as required by this Act no later than twenty days prior to the convening of the regular session of 2018 and shall submit its final report no later than twenty days prior to the convening of the regular session of 2024.

SECTION 6. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2017, and shall be repealed on June 30, 2024; provided that subsection (a) of section 334E-2, Hawaii Revised Statutes, as amended by section 3 of this Act, shall be reenacted in the form in which it read on June 30, 2017.

(Approved July 10, 2017.)