

ACT 58

H.B. NO. 345

A Bill for an Act Relating to Assisted Community Treatment.

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

SECTION 1. The legislature finds that the assisted community treatment program established in 2013 provides individuals with severe mental illness who are unlikely to live safely in the community without available supervision with the necessary medical treatment and medication when it is in the individual's best interest. The legislature further finds that although the assisted community treatment program presents these individuals with an opportunity to receive ongoing treatment in the least restrictive setting and serves as a vital alternative to repeat emergency interventions as their primary course of treatment, many mentally ill individuals fail to participate in the program and partake of these benefits.

The legislature finds that existing law does not require a guardian ad litem to be appointed to represent an individual with severe mental illness during assisted community treatment program proceedings and promote their needs and interests. The legislature further finds that the mandatory appointment of a guardian ad litem upon the filing of an assisted community treatment petition will improve procedures regarding the assisted community treatment program. Where the individual has an existing guardian, that person may act on the individual's behalf during the proceedings and does not necessitate the appointment of a guardian ad litem.

The purpose of this Act is to require the court to appoint, at the time an assisted community treatment program petition is filed, a guardian ad litem to represent the best interests of the individual who is subject to the petition throughout the pendency of the judicial proceedings if there is no existing guardian.

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

“§334- Appointment of a guardian ad litem. The family court, upon receipt of a petition filed under this part, shall determine the existence of a guardian and if none, shall appoint a guardian ad litem to represent the best interests of the subject of the petition throughout the pendency of the proceedings.”

SECTION 3. Section 334-125, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) Notice of the hearing shall be:
- (1) Served personally on the subject of the petition pursuant to family court rules;
 - (2) Served personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, to as many as are known to the petitioner of the subject’s spouse or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed. If the subject of the petition has no living spouse or reciprocal beneficiary, legal parent, adult children, or legal guardian, or if none can be found, notice of the hearing shall be served on at least one of the subject’s closest adult relatives, if any can be found;
 - (3) Served on the ~~[public defender,]~~ guardian ad litem appointed for the subject of the petition or the subject’s existing guardian, if the court determines the existence of one;
 - (4) Served on the attorney for the subject of the petition, [or other court-appointed attorney as] if applicable; and
- [~~(4)~~] (5) Given to other persons as the court may designate.
- (b) The notice shall include the following:
- (1) The date, time, place of hearing, a clear statement of the purpose of the proceedings and possible consequences to the subject, and a statement of the legal standard upon which assisted community treatment is being considered;
 - (2) A copy of the petition;
 - (3) Notice that the subject of the petition has been assigned a guardian ad litem to represent the best interests of the subject throughout the proceeding, unless the court determined the existence of a guardian for the subject; and
- [~~(3)~~] (4) Notice that the subject of the petition is entitled to the assistance of an attorney, and that ~~[the public defender has been notified of these proceedings; and~~
- (4) ~~Notice that if the subject does not want to be represented by the public defender,]~~ the subject may contact ~~[the subject’s]~~ their own attorney.”

SECTION 4. Section 334-126, Hawaii Revised Statutes, is amended to read as follows:

“§334-126 Hearing on petition. (a) The court shall adjourn or continue a hearing for failure to timely notify a person entitled to be notified unless the court determines that the interests of justice require that the hearing continue without adjournment or continuance.

(b) The time and form of the procedure incident to hearing the issues in the petition shall be provided by family court rule and consistent with this part.

(c) Hearings may be held at any convenient place within the circuit. The subject of the petition, any interested party, or the family court upon its own motion may request a hearing in another court because of inconvenience to the parties, witnesses, or the family court or because of the subject's physical or mental condition.

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

(e) The subject of the petition shall not be required to be present at the hearing~~[- However, if; provided that~~ the subject has been served with the petition and ~~[does not appear at the hearing, the court may appoint a]~~ the appointed guardian ad litem, or existing guardian, is present to represent the best interests of the subject through the proceedings.

~~[(f) Notwithstanding chapter 802 to the contrary, the public defender or other court-appointed counsel shall represent the subject upon filing of the petition. A copy of the petition shall be served upon the public defender by the petitioner. The public defender or the court-appointed counsel may withdraw upon a showing that the subject is not indigent. If the subject does not desire representation, the court may discharge the attorney after finding that the subject understands the proceedings and the relief prayed for in the petition. Nothing in this subsection shall be construed to:~~

- ~~(1) Require the subject of the petition to accept legal representation by the public defender or other court-appointed counsel; or~~
- ~~(2) Prevent the subject of the petition from obtaining their own legal counsel to represent them in any proceeding.~~

~~(g)]~~ (f) If the subject of the petition is represented by ~~[an]~~ their own attorney, the attorney shall be allowed adequate time for investigation of the matters at issue and for preparation, and shall be permitted to present the evidence that the attorney believes necessary for a proper disposition of the proceeding.

~~[(h)]~~ (g) No subject of the petition shall be ordered to receive assisted community treatment unless at least one psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization testifies in person at the hearing who has personally assessed the subject, within a reasonable time before the filing of the petition up to the time when the psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization provides oral testimony at court. The testimony of the psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization shall state the facts which support the allegation that the subject meets all the criteria for assisted community treatment, provide a written treatment plan, which shall include non-mental health treatment if appropriate, provide the rationale for the recommended treatment, and identify the designated mental health program responsible for the coordination of care.

If the recommended assisted community treatment includes medication, the testimony of the psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization shall describe the

types or classes of medication which should be authorized, and describe the physical and mental beneficial and detrimental effects of such medication.

(i) (h) The subject of the petition may secure a psychiatric examination and present the findings as evidence at the hearing. The subject shall be entitled to a psychiatric examination at a community mental health center if the subject so desires, and if an examination has not already been conducted at a community mental health center which will lead to psychiatric testimony at the hearing.”

SECTION 5. Section 334-127, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If after hearing all relevant evidence, including the results of any diagnostic examination ordered by the family court, the family court finds that the criteria for assisted community treatment under section 334-121(1) have been met beyond a reasonable doubt and that the criteria under section 334-121(2) to 334-121(4) have been met by clear and convincing evidence, the family court shall order the subject to obtain assisted community treatment for a period of no more than one year. The written treatment plan submitted pursuant to section [334-126(h)] 334-126(g) shall be attached to the order and made a part of the order.

If the family court finds by clear and convincing evidence that the beneficial mental and physical effects of recommended medication outweigh the detrimental mental and physical effects, if any, the order may authorize types or classes of medication to be included in treatment at the discretion of the treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization.

The court order shall also state who should receive notice of intent to discharge early in the event that the treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization determines, prior to the end of the court ordered period of treatment, that the subject should be discharged early from assisted community treatment.

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

SECTION 6. Section 334-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization may prescribe or administer to the subject of the order reasonable and appropriate medication or medications, if specifically authorized by the court order, and treatment that is consistent with accepted medical standards and the family court order, including the written treatment plan submitted pursuant to section [334-126(h)-] 334-126(g).”

SECTION 7. Section 334-133, Hawaii Revised Statutes, is amended to read as follows:

“§334-133 **Petition for additional period [of] treatment; hearing.** (a) ~~Prior to~~ Before the expiration of the period of assisted community treatment ordered by the family court, any interested party may file a petition with the family court for an order of continued assisted community treatment. The petition shall be filed, and unless the court determines the existence of a guardian, a guardian ad litem appointed, and notice provided in the same manner as under sections 334-123 and 334-125.

(b) The family court shall appoint a guardian ad litem, unless there is an existing guardian, hold a hearing on the petition, and make its decision in the same manner as provided under sections 334-123 to 334-127. The family court may order the continued assisted community treatment for ~~not~~ no more than one year after the date of the hearing pursuant to this section if the court finds that the criteria for assisted community treatment continue to exist and are likely to continue beyond one hundred eighty days.

(c) Nothing in this section shall preclude the subject's stipulation to the continuance ~~of~~ an existing court order. This section shall be in addition to the provisions on the objection to discharge."

SECTION 8. Section 334-134, Hawaii Revised Statutes, is amended to read as follows:

"§334-134 Hearing for discharge. Any person may petition the family court for the discharge of an order of assisted community treatment during the period of assisted community treatment after sixty days from the most recent hearing involving the subject of the order. The petition shall be filed, and unless the court determines the existence of a guardian, guardian ad litem appointed, notice given, hearing held, and order made in the same manner as provided for the original petition alleging that the subject of the order met the criteria for assisted community treatment."

SECTION 9. Section 802-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:¹

~~"(b) [Except as provided in section 334-126(f), the]~~ The appearance of the public defender in all judicial proceedings shall be subject to court approval.

(c) The appearance of a public defender in all hearings before the Hawaii paroling authority or other administrative body or agency shall be subject to the approval of the chairperson of the Hawaii paroling authority or the administrative head of the body or agency involved."

SECTION 10. Section 802-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~"(a) [Except as provided in section 334-126(f), when]~~ When it shall appear to a judge that a person requesting the appointment of counsel satisfies the requirements of this chapter, the judge shall appoint counsel to represent the person at all stages of the proceedings, including appeal, if any. If conflicting interests exist, or if the interests of justice require, the court may appoint private counsel, who shall receive reasonable compensation for necessary expenses, including travel, the amount of which shall be determined by the court, and reasonable fees pursuant to subsection (b). All expenses and fees shall be ordered by the court. Duly ordered payment shall be made upon vouchers approved by the director of finance and warrants drawn by the comptroller."

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 13. This Act shall take effect upon its approval.

(Approved June 23, 2021.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.