

JAN 25 2006

A BILL FOR AN ACT

RELATING TO ALCOHOL AND SUBSTANCE ABUSE.

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

1 SECTION 1. This Act shall be known as the "Providing
2 Intervention for Substance Abuse Act".

3 Medical personnel, particularly in the emergency room,
4 regularly encounter patients who have sustained injuries, loss,
5 or trauma that results from use of alcohol or illicit substances.
6 This initial point of contact in a medical setting is a
7 recognized window of opportunity where patients are most
8 vulnerable and open to intervention and dialogue that addresses
9 their underlying alcohol or substance abuse issues. It is at
10 this "teachable moment" that individuals can benefit from an
11 assessment, education, counseling, or, if necessary, a referral
12 to treatment.

13 The "Screening, Briefing, Intervention, Referral, and
14 Treatment" (SBIRT) program capitalizes on this "teachable moment"
15 and is recognized as a best practices initiative by the Substance
16 Abuse and Mental Health Services Administration (SAMHSA), an
17 agency of the U.S. Department of Health and Human Services. The
18 SBIRT program has been successfully implemented and is ongoing in
19 several other states and continues to serve as a best practices

1 and model program. This initiative recognizes that significant
2 steps can be taken, within a medical setting, to address the
3 problems of addiction. The Screening, Briefing, Intervention,
4 Referral, and Treatment program makes the most of an individual's
5 "teachable moment" by offering screening for alcohol or substance
6 abuse, brief intervention, education, and, if necessary,
7 referrals to appropriate care or treatment.

8 Current state law allows insurers to exclude coverage for
9 injuries sustained by insured persons as a result of intoxication
10 from alcohol or narcotics. This statutory exclusion was created
11 under the original model Uniform Accident and Sickness Policy
12 Provision law (UPPL), which was approved in 1947 by the National
13 Association of Insurance Commissioners (NAIC), the organization
14 of insurance regulators from the 50 states, the District of
15 Columbia, and four U.S. territories. At the time of origin, the
16 UPPL model laws mirrored accepted attitudes toward alcohol and
17 drug use. In 1955, Hawaii adopted the Uniform Accident and
18 Sickness Policy Provision Law model language.

19 Significantly, in 2001, the National Association of
20 Insurance Commissioners voted unanimously to repeal the provision
21 of the Uniform Accident and Sickness Policy Provision Law
22 relating to alcohol and narcotics. In its place, the National

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1 Association of Insurance Commissioners adopted a revised model
2 law that prohibits health insurers from denying coverage on the
3 basis of intoxication from alcohol or narcotics. The National
4 Conference of Insurance Legislators, the American Medical
5 Association, American Bar Association, Mothers Against Drunk
6 Driving, and the Emergency Nurses Association have publicly
7 supported this initiative. While many other states have adopted
8 legislation that prohibits medical health insurers from denying
9 coverage on the basis of intoxication from alcohol or narcotics,
10 Hawaii law has remained unchanged, and continues to mirror the
11 original Uniform Accident and Sickness Policy Provision Law
12 language.

13 Accordingly, under current Hawaii law, health care
14 professionals and substance abuse screeners may be hesitant to
15 link alcohol or substance abuse to an injury, for fear of non-
16 reimbursement for services rendered. In order to successfully
17 implement the Screening, Briefing, Intervention, Referral, and
18 Treatment program in Hawaii, current law must be changed to
19 remove barriers that impede these screeners from comprehensively
20 assessing a patient's underlying alcohol or substance abuse
21 issues. It is noted that this problem currently impedes the use
22 of existing federal monies appropriated through the State of

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1 Hawaii's Department of Transportation for a similar screening
2 pilot program.

3 The purpose of this Act is to: (1) prohibit medical health
4 insurers from excluding coverage for injuries sustained by
5 insured persons as a result of intoxication from alcohol or
6 narcotics, and (2) appropriate funds to establish the SBIRT
7 program in the state of Hawaii.

8 SECTION 2. Section 431:10A-106, Hawaii revised Statutes,
9 is amended to read as follows:

10 "**§431:10A-106 Optional provisions.** Except as provided in
11 section 431:10A-107, no policy of accident and health or
12 sickness insurance delivered or issued for delivery to any
13 person in this State shall contain the provisions set forth
14 below unless the provisions are in the words in which they
15 appear below; provided that the insurer may substitute
16 corresponding provisions of different wording approved by the
17 commissioner that are in each instance not less favorable in any
18 respect to the insured or the beneficiary. Such provisions are
19 optional provisions. Any such provision contained in the policy
20 shall be preceded individually by the specified caption or, at
21 the option of the insurer, by such appropriate individual or

1 group captions or subcaptions as the commissioner may approve.

2 The provisions are as follows:

3 (1) "Change of Occupation: If the insured is injured or
4 contracts sickness after having changed occupations to one
5 classified by the insurer as more hazardous than that stated in
6 this policy or while doing for compensation anything pertaining
7 to an occupation so classified, the insurer will pay only such
8 portion of the indemnities provided in this policy as the
9 premium paid would have purchased at the rates and within the
10 limits fixed by the insurer for the more hazardous occupation.
11 If the insured's occupation changes to one classified by the
12 insurer as less hazardous than that stated in this policy, the
13 insurer, upon receipt of proof of such change of occupation,
14 will reduce the premium rate accordingly, and will return the
15 excess pro rata unearned premium from the date of change of
16 occupation or from the policy anniversary date immediately
17 preceding receipt of such proof, whichever is the more recent.
18 In applying this provision, the classification of occupational
19 risk and the premium shall be such as have been last filed by
20 the insurer prior to the occurrence of the loss for which the
21 insurer is liable or prior to date of proof of change in
22 occupation with the state official having supervision of

1 insurance in the state where the insured resided at the time
2 this policy was issued; but if such filing was not required,
3 then the classification of occupational risk and the premium
4 rates shall be those last made effective by the insurer in such
5 state prior to the occurrence of the loss or prior to the date
6 of proof of change in occupation."

7 (2) "Misstatement of Age: If the age of the insured has
8 been misstated, all amounts payable under this policy shall be
9 such as the premium paid would have purchased at the correct
10 age."

11 (3) Other insurance in this insurer shall be in one of the
12 following forms:

13 (A) "Other Insurance in This Insurer: If an accident
14 and health or sickness policy or policies
15 previously issued by the insurer to the insured
16 be in force concurrently herewith, making the
17 aggregate indemnity for (insert type of coverage
18 or coverages) in excess of \$ (insert maximum
19 limit of indemnity or indemnities) the excess
20 insurance shall be void and all premiums paid for
21 such excess shall be returned to the insured or
22 to the insured's estate."; or

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1 (B) "Other Insurance in This Insurer: Insurance
2 effective at any one time on the insured under a
3 like policy or policies in this insurer is
4 limited to the one such policy elected by the
5 insured, the insured's beneficiary, or the
6 insured's estate, as the case may be, and the
7 insurer will return all premiums paid for all
8 other such policies."

9 (4) Insurance with other insurers. Either or both of the
10 following forms shall be used:

11 (A) (i) "Insurance with Other Insurers: If there be
12 other valid coverage, not with this insurer,
13 providing benefits for the same loss on a
14 provision of service basis or on an expense
15 incurred basis and of which this insurer has
16 not been given written notice prior to the
17 occurrence or commencement of loss, the only
18 liability under any expense incurred
19 coverage of this policy shall be for such
20 proportion of the loss as the amount which
21 would otherwise have been payable hereunder
22 plus the total of the like amounts under all

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1 such other valid coverages for the same loss
2 of which this insurer had notice bears to
3 the total like amounts under all valid
4 coverages for such loss, and for the return
5 of such portion of the premiums paid as
6 shall exceed the pro rata portion for the
7 amount so determined. For the purpose of
8 applying this provision when other coverage
9 is on a provision of service basis, the like
10 amount of such other coverage shall be taken
11 as the amount which the services rendered
12 would have cost in the absence of such
13 coverage."

14 (ii) "Insurance with Other Insurers: If there be
15 other valid coverage, not with this insurer,
16 providing benefits for the same loss on
17 other than an expense incurred basis and of
18 which this insurer has not been given
19 written notice prior to the occurrence or
20 commencement of loss, the only liability for
21 such benefits under this policy shall be for
22 such proportion of the indemnities otherwise

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1 provided hereunder for such loss as the like
2 indemnities of which the insurer had notice
3 (including the indemnities under this
4 policy) bear to the total amount of all the
5 indemnities for such loss, and for the
6 return of such portion of the premium paid
7 as shall exceed the pro rata portion for the
8 indemnities thus determined."

9 (B) If the provision set forth in subparagraph (A) (i)
10 is included in a policy that also contains the
11 provision set forth in subparagraph (A) (ii),
12 there shall be added to the caption of the
13 subparagraph (A) (i) provision the phrase,
14 "expense incurred benefits".

15 (C) The insurer may, at its option, include in the
16 provision set forth in subparagraph (A) (i) a
17 definition of other valid coverage, approved as
18 to form by the commissioner, which definition
19 shall be limited in subject matter to coverage
20 provided by organizations subject to regulation
21 by insurance law or by insurance authorities of
22 this State or any other state or territory of the

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1 United States or any province of Canada, and by
2 hospital or medical service organizations, and to
3 any other coverage the inclusion of which may be
4 approved by the commissioner. In the absence of
5 such definition the term shall not include group
6 insurance, automobile medical payment insurance,
7 or coverage provided by hospital or medical
8 service organizations, union welfare plans, or
9 employer or employee benefit organizations. For
10 the purpose of applying the provision set forth
11 in subparagraph (A)(i) with respect to any
12 insured, any amount of benefit provided for such
13 insured pursuant to any compulsory benefit
14 statute (including any workers' compensation or
15 employers' liability statute), whether provided
16 by a governmental agency or otherwise, shall in
17 all cases be deemed to be other valid coverage of
18 which the insurer has had notice. In applying the
19 provision set forth in subparagraph (A)(i), no
20 third party liability coverage shall be included
21 as other valid coverage.

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1 (D) If the provision set forth in subparagraph
2 (A)(ii) is included in a policy that also
3 contains the provision set forth in subparagraph
4 (A)(i), there shall be added to the caption of
5 the subparagraph (A)(ii) provision the phrase,
6 "other benefits".

7 (E) The insurer may, at its option, include in the
8 provision set forth in subparagraph (A)(ii) a
9 definition of other valid coverage, approved as
10 to form by the commissioner, which definition
11 shall be limited in subject matter to coverage
12 provided by organizations subject to regulation
13 by insurance law or by insurance authorities of
14 this State or any other state or territory of the
15 United States or any province of Canada, and to
16 any other coverage the inclusion of which may be
17 approved by the commissioner. In the absence of
18 such definition the term shall not include group
19 insurance, or benefits provided by union welfare
20 plans or employer or employee benefit
21 organizations. For the purpose of applying the
22 provision set forth in subparagraph (A)(ii) with

1 respect to any insured, any amount of benefit
2 provided for such insured pursuant to any
3 compulsory benefit statute (including any
4 workers' compensation or employers' liability
5 statute), whether provided by a governmental
6 agency or otherwise, shall in all cases be deemed
7 to be other valid coverage of which the insurer
8 has had notice. In applying the provision set
9 forth in subparagraph (A)(ii), no third party
10 liability coverage shall be included as other
11 valid coverage.

- 12 (5) (A) "Relation of Earnings to Insurance: If the total
13 monthly amount of loss of time benefits promised
14 for the same loss under all valid loss of time
15 coverage upon the insured, whether payable on a
16 weekly or monthly basis, shall exceed the monthly
17 earnings of the insured at the time disability
18 commenced or the insured's average monthly
19 earnings for the period of two years immediately
20 preceding a disability for which claim is made,
21 whichever is the greater, the insurer will be
22 liable only for such proportionate amount of such

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1 benefits under this policy as the amount of such
2 monthly earnings or such average monthly earnings
3 of the insured bears to the total amount of
4 monthly benefits for the same loss under all such
5 coverage upon the insured at the time such
6 disability commences and for the return of such
7 part of the premiums paid during such two years
8 as shall exceed the pro rata amount of the
9 premiums for the benefits actually paid
10 hereunder; but this shall not operate to reduce
11 the total monthly amount of benefits payable
12 under all such coverage upon the insured below
13 the sum of \$200 or the sum of the monthly
14 benefits specified in such coverages, whichever
15 is the lesser, nor shall it operate to reduce
16 benefits other than those payable for loss of
17 time."

18 (B) The policy provision in subparagraph (A) may be
19 inserted only in a policy which the insured has
20 the right to continue in force, subject to its
21 terms by the timely payment of premiums until at
22 least age fifty or, in the case of a policy

1 issued after age forty-four, for at least five
2 years from its date of issue.

3 (C) The insurer may, at its option, include in the
4 provision set forth in subparagraph (A) a
5 definition of valid loss of time coverage
6 approved as to form by the commissioner, which
7 definition shall be limited in subject matter to
8 coverage provided by governmental agencies or by
9 organizations subject to regulation by insurance
10 law or by insurance authorities of this State or
11 any state, district, or territory of the United
12 States or any province of Canada, or to any other
13 coverage the inclusion of which may be approved
14 by the commissioner or any combination of such
15 coverages. In the absence of such definition such
16 terms shall not include any coverage provided for
17 such insured pursuant to any compulsory benefit
18 statute (including any workers' compensation or
19 employers' liability statute), or benefits
20 provided by union welfare plans or by employer or
21 employee benefit organizations.

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1 (6) "Unpaid Premium: Upon the payment of a claim under
2 this policy, any premium then due and unpaid or
3 covered by any note or written order may be deducted
4 therefrom."

5 (7) "Cancellation: The insurer may cancel this policy at
6 any time by written notice delivered to the insured,
7 or mailed to the insured's last address as shown by
8 the records of the insurer, stating when, not less
9 than five days thereafter, such cancellation shall be
10 effective; and after the policy has been continued
11 beyond its original term the insured may cancel this
12 policy at any time by written notice delivered or
13 mailed to the insurer, effective upon receipt or on
14 such later date as may be specified in such notice. In
15 the event of cancellation, the insurer will return
16 promptly the unearned portion of any premium paid. If
17 the insured cancels, the earned premium shall be
18 computed by the use of the short-rate table last filed
19 with the state official having supervision of
20 insurance in the state where the insured resided when
21 the policy was issued. If the insurer cancels, the
22 earned premium shall be computed pro rata.

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1 Cancellation shall be without prejudice to any claim
2 originating prior to the effective date of
3 cancellation."

4 (8) "Conformity with State Statutes: Any provision of this
5 policy which, on its effective date, is in conflict
6 with the statutes of the state in which the insured
7 resides on such date is hereby amended to conform to
8 the minimum requirements of such statutes."

9 (9) "Illegal Occupation: The insurer shall not be liable
10 for any loss to which a contributing cause was the
11 insured's commission of or attempt to commit a felony
12 or to which a contributing cause was the insured's
13 being engaged in an illegal occupation."

14 [~~(10) "Intoxicants and Narcotics: The insurer shall not be~~
15 ~~liable for any loss sustained or contracted in~~
16 ~~consequence of the insured's being intoxicated or~~
17 ~~under the influence of any narcotic unless~~
18 ~~administered on the advice of a physician."]"~~

19 SECTION 3. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$1,883,981, or so
21 much thereof as may be necessary for fiscal year 2006-07 to
22 implement the pilot program for screening, brief intervention,

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1 referral and substance abuse treatment at hospital emergency
2 rooms; provided that \$82,458 shall be used to fund one temporary
3 position in the alcohol and drug abuse division of the
4 department of health, and equipment and other operating expenses
5 for the division to administer and coordinate the pilot program;
6 and provided further that \$1,801,529 shall be expended for
7 implementation of screening, brief intervention, referral and
8 substance abuse treatment services.

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken.

11 SECTION 5. This Act shall take effect on July 1, 2006.

12
13 INTRODUCED BY: 

14 BY REQUEST

JUSTIFICATION SHEET

SB. NO. 2364

DEPARTMENT: Office of the Lt. Governor

TITLE: A BILL FOR AN ACT RELATING TO ALCOHOL AND SUBSTANCE ABUSE.

PURPOSE: To (1) repeal optional, exclusionary insurance provision for injuries sustained by insured persons as a result of intoxication from alcohol or narcotics, and (2) appropriate funds to establish and operate the Screening, Briefing, Intervention, Referral, and Treatment program in the state of Hawaii.

MEANS: Amend section 431:10A-106, Hawaii Revised Statutes. Appropriates funds for the Screening, Briefing, Intervention, Referral, and Treatment pilot program.

JUSTIFICATION: Medical personnel, particularly in the emergency room, regularly encounter patients who have sustained injuries, loss, or trauma that results from use of alcohol or illicit substances. This initial point of contact in a medical setting is a recognized window of opportunity where patients are most vulnerable and open to intervention and dialogue that addresses their underlying alcohol or substance abuse issues. It is at this "teachable moment" that individuals can benefit from an assessment, education, counseling, or, if necessary, a referral to treatment.

The "Screening, Briefing, Intervention, Referral, and Treatment" (SBIRT) program capitalizes on this "teachable moment" and is recognized as a best practices initiative by the Substance Abuse and Mental Health Services Administration (SAMHSA), an agency of the U.S. Department of Health and Human Services. The SBIRT program has been successfully implemented and is ongoing in several other states and continues to serve as a best practices and model program. This initiative recognizes that significant steps can be taken, within a medical setting, to address the problems of addiction. The SBIRT

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program makes the most of an individual's "teachable moment" by offering screening for alcohol or substance abuse, brief intervention, education, and, if necessary, referrals to appropriate care or treatment.

Current state law allows insurers to exclude coverage for injuries sustained by insured persons as a result of intoxication from alcohol or narcotics. This statutory exclusion was created under the original model Uniform Accident and Sickness Policy Provision law (UPPL), which was approved in 1947 by the National Association of Insurance Commissioners (NAIC), the organization of insurance regulators from the 50 states, the District of Columbia, and four U.S. territories. At the time of origin, the UPPL model laws mirrored accepted attitudes toward alcohol and drug use. In 1955, Hawaii adopted the UPPL model language.

Significantly, in 2001, the NAIC voted unanimously to repeal the provision of the UPPL relating to alcohol and narcotics. In its place, the NAIC adopted a revised model law that prohibits health insurers from denying coverage on the basis of intoxication from alcohol or narcotics. The National Conference of Insurance Legislators, the American Medical Association, American Bar Association, Mothers Against Drunk Driving, and the Emergency Nurses Association have publicly supported this initiative. While many other states have adopted legislation that prohibits medical health insurers from denying coverage on the basis of intoxication from alcohol or narcotics, Hawaii law has remained unchanged, and continues to mirror the original UPPL language.

Accordingly, under current Hawaii law, health care professionals and substance abuse screeners may be hesitant to link alcohol or substance abuse to an injury, for fear of non-reimbursement for services rendered. In order to successfully implement the SBIRT program in Hawaii, current law must be changed to remove barriers that impede these screeners from comprehensively assessing a patient's underlying alcohol or substance abuse issues. It is noted that this problem

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currently impedes the use of existing federal monies appropriated through the State of Hawaii's Department of Transportation for a similar screening pilot program.

The general fund recommendation included in this measure has been made in accordance with the statutorily defined appropriation ceiling for the Executive Branch pursuant to section 37-92, Hawaii Revised Statutes. Including appropriations made up to and including the regular and special sessions of 2005 and the Executive Supplemental Budget for fiscal year 2006-2007, the Executive Branch appropriation ceiling for fiscal year 2006-2007 has already been exceeded by \$103.6 million, or 2.1 percent. Funding requested in this measure for the SBIRT program will result in the appropriation ceiling for the Executive Branch to now be exceeded in fiscal year 2006-2007 by \$1,883,981, or 0.039 percent. This current declaration takes into account additional general fund appropriations authorized for fiscal year 2006-2007 in this measure only, and does not include other general fund appropriations for fiscal year 2006-2007 that may be authorized for the Executive Branch in other legislation submitted to the Legislature during the regular session of 2006.

Impact on the public: Prohibition of the exclusionary provision will encourage health care providers to make appropriate referral or treatment for patients regarding alcohol and/or substance use. Moreover, this measure will improve the delivery and quality of health care for persons with alcohol or substance abuse issues.

Impact on the department and other agencies:
None.

GENERAL FUND:	\$1,883,981.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	HTH 440

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OTHER AFFECTED
AGENCIES:

Department of Commerce and Consumer Affairs,
Insurance Division.

EFFECTIVE DATE:

July 1, 2006.