

JAN 25 2006

S.B. NO. 2658

---

---

# A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

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

1           SECTION 1. The legislature finds that patient safety  
2 reforms are needed to ensure that adverse medical events and  
3 errors are reported, tracked, and analyzed. These reforms  
4 enable physicians and hospitals to identify system weaknesses  
5 and learn from their mistakes before more consequential events  
6 occur. These reforms encourage open, frank communications  
7 between patients and physicians, apologies, and quick resolution  
8 of claims through mediation to avoid bitter and protracted  
9 lawsuits.

10           The purpose of this Act is to require:

11           (1) Health care workers and medical facilities to report  
12 serious medical events to the department of health and  
13 each medical facility's patient safety committee to  
14 enable systemic correction of the problem leading to  
15 the event;

16           (2) Health care workers and medical facilities to notify  
17 patients and their families of serious medical events  
18 through open and frank communications; and



1 (3) Medical facilities to develop a mediation model to  
2 encourage the exchange of information and the  
3 settlement of claims at an early opportunity.

4 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
5 amended by adding a new part to be appropriately designated and  
6 to read as follows:

7 **"PART . PATIENT SAFETY**

8 **§321-A Scope.** This part relates to the reduction of  
9 medical errors for the purpose of ensuring patient safety.

10 **§321-B Definitions.** The following words and phrases when  
11 used in this part shall have the meanings given to them in this  
12 section unless the context clearly indicates otherwise:

13 "Department" means the department of health.

14 "Health care worker" means an employee, independent  
15 contractor, licensee, or other individual authorized to provide  
16 services in a medical facility.

17 "Incident" means an event, occurrence, or situation  
18 involving the clinical care of a patient in a medical facility  
19 that could have injured the patient but did not either cause an  
20 unanticipated injury or require the delivery of additional  
21 health care services to the patient. The term does not include  
22 a serious event.



1 "Infrastructure" means structures related to the physical  
2 plant and service delivery systems necessary for the provision  
3 of health care services in a medical facility.

4 "Infrastructure failure" means an undesirable or unintended  
5 event, occurrence, or situation involving the infrastructure of  
6 a medical facility or the discontinuation or significant  
7 disruption of a service that could seriously compromise patient  
8 safety.

9 "Licensee" means an individual who is all of the following:

- 10 (1) Licensed or certified by the department or the State  
11 to provide professional services in the State; and  
12 (2) Employed by or authorized to provide professional  
13 services in a medical facility.

14 "Medical facility" means a health care facility that has  
15 been issued a certificate of need under chapter 323D.

16 "Patient safety officer" means an individual designated by  
17 a medical facility under section 321-F.

18 "Serious event" means an event, occurrence, or situation  
19 involving the clinical care of a patient in a medical facility  
20 that results in death or compromises patient safety and results  
21 in an unanticipated injury requiring the delivery of additional



1 health care services to the patient. The term does not include  
2 an incident.

3 **§321-C Department responsibilities.** The department shall:

4 (1) Review and approve patient safety plans in accordance  
5 with section 321-D;

6 (2) Receive reports of serious events and infrastructure  
7 failures under section 321-I;

8 (3) Investigate serious events and infrastructure  
9 failures; and

10 (4) Analyze and evaluate existing health care procedures.

11 **§321-D Patient safety plans.** (a) Each medical facility

12 shall develop, implement, and comply with an internal patient

13 safety plan that shall be established for the purpose of

14 improving the health and safety of patients. The plan shall be

15 developed in consultation with the licensees providing health

16 care services in the medical facility.

17 (b) A patient safety plan shall:

18 (1) Designate a patient safety officer as set forth in  
19 section 321-F;

20 (2) Establish a patient safety committee as set forth in  
21 section 321-G;



1 (3) Establish a system for the health care workers of a  
2 medical facility to report serious events and  
3 incidents, which shall be accessible twenty-four hours  
4 a day, seven days a week;

5 (4) Prohibit any retaliatory action against a health care  
6 worker for reporting a serious event or incident in  
7 accordance with section 378-62; and

8 (5) Provide for written notification to patients in  
9 accordance with section 321-E(b).

10 (c) Within sixty days from the effective date of this  
11 section, a medical facility shall submit its patient safety plan  
12 to the department for approval consistent with the requirements  
13 of this section. Unless the department approves or rejects the  
14 plan within sixty days of receipt, the plan shall be deemed  
15 approved.

16 (d) Upon approval of the patient safety plan, a medical  
17 facility shall notify all health care workers of the medical  
18 facility of the patient safety plan. Compliance with the  
19 patient safety plan shall be required as a condition of  
20 employment or credentialing at the medical facility.

21 **§321-E Reporting and notification.** (a) A health care  
22 worker who reasonably believes that a serious event or incident



1 has occurred shall report the serious event or incident  
2 according to the patient safety plan of the medical facility,  
3 unless the health care worker knows that a report has already  
4 been made. The report shall be made immediately or as soon  
5 thereafter as reasonably practicable, but in no event later than  
6 twenty-four hours after the occurrence or discovery of a serious  
7 event or incident.

8 (b) A medical facility through an appropriate designee  
9 shall provide written notification to a patient affected by a  
10 serious event or, with the consent of the patient, to an  
11 available family member or designee, within seven days of the  
12 occurrence or discovery of a serious event. If the patient is  
13 unable to give consent, the notification shall be given to an  
14 adult member of the immediate family. If an adult member of the  
15 immediate family cannot be identified or located, notification  
16 shall be given to the closest adult family member. For  
17 unemancipated patients who are under eighteen years of age, the  
18 parent or guardian shall be notified in accordance with this  
19 subsection. The notification requirements of this subsection  
20 shall not be subject to section 321-H(a). Notification under  
21 this subsection shall not constitute an acknowledgment or  
22 admission of liability.



1 (c) A health care worker who reports the occurrence of a  
2 serious event or incident in accordance with subsection (a) or  
3 (b) shall not be subject to any retaliatory action for reporting  
4 the serious event or incident and shall have the protections and  
5 remedies set forth in section 378-62.

6 (d) Nothing in this section shall limit a medical  
7 facility's ability to take appropriate disciplinary action  
8 against a health care worker for failure to meet defined  
9 performance expectations or to take corrective action against a  
10 licensee for unprofessional conduct, including making false  
11 reports or failure to report serious events under this chapter.

12 **§321-F Patient safety officer.** A patient safety officer  
13 of a medical facility shall do all of the following:

- 14 (1) Serve on the patient safety committee;
- 15 (2) Ensure the investigation of all reports of serious  
16 events and incidents;
- 17 (3) Take such action as is immediately necessary to ensure  
18 patient safety as a result of any investigation; and
- 19 (4) Report to the patient safety committee regarding any  
20 action taken to promote patient safety as a result of  
21 investigations commenced pursuant to this section.



1           **§321-G Patient safety committee.** (a) A hospital's  
2 patient safety committee shall be composed of the medical  
3 facility's patient safety officer, at least three health care  
4 workers of the medical facility, and two residents of the  
5 community served by the medical facility who are not agents,  
6 employees, or contractors of the medical facility. No more than  
7 one member of the patient safety committee shall be a member of  
8 the medical facility's board of trustees. The committee shall  
9 include members of the medical facility's medical and nursing  
10 staff. The committee shall meet at least monthly.

11           (b) A patient safety committee of a medical facility shall  
12 do all of the following:

- 13           (1) Receive reports from the patient safety officer  
14                 pursuant to section 321-F;
- 15           (2) Evaluate investigations and actions of the patient  
16                 safety officer on all reports;
- 17           (3) Review and evaluate the quality of patient safety  
18                 measures utilized by the medical facility. A review  
19                 shall include the consideration of reports made under  
20                 sections 321-D(b)(3) and 321-E(a);
- 21           (4) Make recommendations to eliminate future serious  
22                 events and incidents; and



1 (5) Report to the administrative officer and governing  
2 body of the medical facility on a quarterly basis  
3 regarding the number of serious events and incidents  
4 and its recommendations to eliminate future serious  
5 events and incidents.

6 **§321-H Confidentiality and compliance.** (a) Any  
7 documents, materials, or information solely prepared or created  
8 for the purpose of compliance with section 321-G(b) or of  
9 reporting under section 321-C, 321-D(b) (3), 321-E(a), 321-F(4),  
10 321-G(b) (5), or 321-I that arise out of matters reviewed by  
11 either the patient safety committee or the governing board of a  
12 medical facility pursuant to section 321-G(b) are confidential  
13 and shall not be discoverable or admissible as evidence in any  
14 civil or administrative action or proceeding. Any documents,  
15 materials, records, or information that would otherwise be  
16 available from original sources shall not be construed as immune  
17 from discovery or use in any civil or administrative action or  
18 proceeding merely because they were presented to the patient  
19 safety committee or governing board of a medical facility.

20 (b) No person who performs responsibilities for or  
21 participates in meetings of the patient safety committee or  
22 governing board of a medical facility pursuant to section 321-



1 G(b) shall be allowed to testify as to any matters within the  
2 knowledge gained by the person's responsibilities or  
3 participation on the patient safety committee or governing board  
4 of a medical facility; provided that the person shall be allowed  
5 to testify as to any matters within the person's knowledge that  
6 was gained outside of the persons' responsibilities or  
7 participation on the patient safety committee or governing board  
8 of a medical facility pursuant to section 321-G(b).

9 (c) The confidentiality protections set forth in  
10 subsections (a) and (b) shall only apply to the documents,  
11 materials, or information prepared or created pursuant to the  
12 responsibilities of the patient safety committee or governing  
13 board of a medical facility set forth in section 321-G(b).

14 (d) Except as set forth in subsection (f), any documents,  
15 materials, or information received by the department from the  
16 medical facility, health care worker, patient safety committee,  
17 or governing board of a medical facility solely prepared or  
18 created for the purpose of compliance with section 321-G(b) or  
19 of reporting under section 321-C, 321-D(b)(3), 321-E(a),  
20 321-F(4), 321-G(b)(5) or 321-I shall not be discoverable or  
21 admissible as evidence in any civil or administrative action or  
22 proceeding. Any records received by the department from the



1 medical facility, health care worker, patient safety committee,  
2 or governing board of a medical facility pursuant to the  
3 requirements of this part shall not be discoverable from the  
4 department in any civil or administrative action or proceeding.  
5 Documents, materials, records, or information may be used by the  
6 department to comply with the reporting requirements under  
7 subsection (f).

8 (e) No current or former employee of the department shall  
9 be allowed to testify as to any matters gained by reason of the  
10 employee's review of documents, materials, records, or  
11 information submitted to the department by the medical facility  
12 or health care worker pursuant to the requirements of this part;  
13 provided that the prohibition to testify does not apply to  
14 findings or actions by the department that are public records.

15 (f) The department shall have access to the information  
16 under section 321-I(a) or (c) and may use that information for  
17 the sole purpose of any licensure or corrective action against a  
18 medical facility; provided that this exemption shall not be used  
19 to permit the disclosure of any information obtained under  
20 section 321-I(a) or (c) for any other purpose. The board of  
21 medical examiners shall have access to the information under  
22 section 321-I(a) and may use that information for the sole



1 purpose of any licensure or disciplinary action against a health  
2 care worker; provided that this exemption shall not be used to  
3 permit the disclosure of any information obtained under section  
4 321-I(a) for any other purpose.

5 (g) In the event an original source document as set forth  
6 in subsection (a) is determined by a court of competent  
7 jurisdiction to be unavailable from the health care worker or  
8 medical facility in a civil action or proceeding, then, in that  
9 circumstance alone, the department may be required pursuant to a  
10 court order to release that original source document to the  
11 party identified in the court order.

12 (h) Any documents, materials, or information made  
13 confidential by subsection (a) shall not be subject to requests  
14 under chapter 92F.

15 (i) Notwithstanding any other provision of law, no person  
16 providing information or services to the patient safety  
17 committee, governing board of a medical facility, or department  
18 shall be held, by reason of having provided that information or  
19 services, to have violated any criminal law or to be civilly  
20 liable under any law, unless the information is false and the  
21 person providing the information knew, or had reason to believe,



1 that the information was false and was motivated by malice  
2 toward any person directly affected by that action.

3 **§321-I Medical facility reports and notifications.** (a) A  
4 medical facility shall report the occurrence of a serious event  
5 to the department within twenty-four hours of the medical  
6 facility's confirmation of the occurrence of the serious event.  
7 The report to the department shall be in the form and manner  
8 prescribed by the department and shall not include the name of  
9 any patient or any other identifiable individual information.

10 (b) A medical facility shall report the occurrence of an  
11 incident to the department in a form and manner prescribed by  
12 the department and shall not include the name of any patient or  
13 any other identifiable individual information.

14 (c) A medical facility shall report the occurrence of an  
15 infrastructure failure to the department within twenty-four  
16 hours of the medical facility's confirmation of the occurrence  
17 or discovery of the infrastructure failure. The report to the  
18 department shall be in the form and manner prescribed by the  
19 department.

20 (d) If a medical facility discovers that a licensee  
21 providing health care services in the medical facility during a  
22 serious event failed to report the event in accordance with



1 section 321-E(a), the medical facility shall notify the  
2 licensee's licensing board of the failure to report.

3 (e) The department may impose an administrative penalty of  
4 \$1,000 per day for failure to:

5 (1) Report a serious event or an infrastructure failure as  
6 required by this section;

7 (2) Develop and comply with the patient safety plan in  
8 accordance with section 321-D;

9 (3) Notify the patient in accordance with section 321-  
10 E(b); or

11 (4) Notify a licensure board in accordance with this part.

12 **§321-J Mediation.** (a) Each medical facility shall

13 develop and implement a mediation model that:

14 (1) Encourages parties to participate in mediation as soon  
15 practicable after a serious event;

16 (2) Incorporates a procedure that allows health care  
17 professionals to meet directly with the patient or the  
18 patient's family members and a mediator to help the  
19 parties gain understanding, assess the strengths of  
20 their positions, explore non-economic proposals, and  
21 either reach a mutually acceptable resolution to the



1           dispute or decide on another approach, including  
2           litigation;

3           (3) Affords the parties the opportunity to ask questions,  
4           express their feelings, and exchange information;

5           (4) Provides communications skills training to physicians  
6           and other health care professionals; and

7           (5) Prepares a core group of skilled and experienced staff  
8           members at the medical facility who can help others  
9           prepare for disclosure conversations.

10          (b) Mediation statements or settlement offers tendered  
11 shall not be admitted into any subsequent proceedings involving  
12 the case, including a contested case hearing or a court  
13 proceeding.

14          (c) Mediation sessions shall not constitute a meeting for  
15 purposes of chapter 92. Mediator notes under this section shall  
16 be exempt from section 92-21 and chapter 92F. Section 91-10  
17 shall not apply to mediation proceedings."

18          SECTION 3. This Act does not affect rights and duties that  
19 matured, penalties that were incurred, and proceedings that were  
20 begun, before its effective date.



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: Rosalyn H Baker





# SB. NO. 2658

**Report Title:**

Medical Liability; Medical Error Reporting

**Description:**

Requires the reporting of serious medical errors to the department of health and the medical facilities' patient safety committee. Requires open disclosure of serious medical errors to patients and their families. Requires medical facilities to develop a mediation model for handling serious medical errors.

