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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1           SECTION 1. A 1999 national pain survey revealed that 50  
2 million Americans suffer from chronic pain as a result of  
3 chronic disease, disorder, or accident. It was estimated that  
4 another 25 million people live with acute pain from accident or  
5 surgery. Pain is a silent epidemic that affects the lives of  
6 individuals and their families. According to the American  
7 Academy of Pain Management, effective pain and symptom  
8 management is an ethical obligation for all healthcare providers  
9 and organizations.

10           The *2000 Pain in America: A Research Report* showed that,  
11 although 80 per cent of Americans feel that pain is a natural  
12 part of aging, only 64 per cent would seek medical treatment for  
13 intolerable pain. The report also found that 60 per cent of  
14 Americans believe that pain is "just something you have to live  
15 with." The perception of 28 per cent of the population is that  
16 there is no effective treatment for pain. It is thus important  
17 for individuals, their families, and their caregivers to know



1 that there are many effective treatment options for the  
2 management of pain and that people do not have to suffer from  
3 chronic, debilitating, intolerable pain.

4 According to the American College of Physicians, internal  
5 medicine section, most pain from disease and chronic conditions  
6 can be controlled or even eliminated. For example, even  
7 advanced pain can be controlled in 90 to 99 per cent of cases.  
8 In nine out of ten cases, physicians can control pain by using  
9 pills alone without having to use injections, operations, or  
10 other methods. In those few cases in which pain from disease  
11 and chronic conditions cannot be eliminated completely, it can  
12 be reduced so that the person can live with the pain from day to  
13 day and still accomplish activities that are important to the  
14 person. The American College of Physicians further states:

- 15 (1) Pain from disease and chronic conditions can be  
16 controlled;
- 17 (2) The person with advanced pain from disease and chronic  
18 conditions has a right to effective pain control;
- 19 (3) Part of the job as a caregiver is to ensure effective  
20 pain control;
- 21 (4) Pain control takes time to achieve, so persistence is  
22 vital;



1 (5) Only the person with pain knows what the pain is like;  
2 and

3 (6) Never assume that pain means the underlying medical  
4 condition is spreading.

5 A pain initiative in Texas states that, while alternatives  
6 to drug treatment, such as biofeedback, hypnosis, and  
7 acupuncture can be effective for some types of pain:

8 (1) Most pain patients will also require narcotics;

9 (2) Addiction is extremely rare when narcotics are used to  
10 treat pain from disease and chronic conditions; and

11 (3) Virtually all pain from disease and chronic conditions  
12 can be relieved.

13 The legislature finds that existing law should permit pain  
14 patients to be prescribed appropriate narcotic pain medication.

15 The legislature further finds that pain patients deserve  
16 appropriate medical care that relieves the debilitating and  
17 intolerable discomforts of pain as much as possible so they can  
18 lead normal lives to the greatest extent possible, and so  
19 caregivers can be relieved of stress and anxiety in witnessing  
20 the ravaging effects of pain on the quality of life of the pain  
21 patient in their care.

1           The purpose of this Act is to better the quality of life  
2 for many individuals through pain relief by:

- 3           (1) Clarifying the provisions for prescribing opiate  
4           medication for pain treatment; and
- 5           (2) Extending the time limit within which schedule II  
6           controlled substances prescriptions must be filled.

7           SECTION 2. Section 327H-2, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "~~+~~§327H-2~~+~~ **Bill of rights.** (a) The pain patient's  
10 bill of rights includes the following:

- 11           (1) A patient who suffers from severe acute pain or severe  
12           chronic pain has the option to request or reject the  
13           use of any or all modalities to relieve the pain;
- 14           (2) A patient who suffers from severe acute pain or severe  
15           chronic pain has the option to choose from appropriate  
16           pharmacologic treatment options to relieve severe  
17           acute pain or severe chronic pain, including opiate  
18           medications, without first having to submit to an  
19           invasive medical procedure.

20                           For purposes of this paragraph, "invasive medical  
21 procedure" means surgery, destruction of a nerve or

1 other body tissue by manipulation, or the implantation  
2 of a drug delivery system or device;

3 (3) A patient's physician may refuse to prescribe opiate  
4 medication for a patient who requests a treatment for  
5 severe acute pain or severe chronic pain. However,  
6 that physician may inform the patient of physicians  
7 who are qualified to treat severe acute pain and  
8 severe chronic pain employing methods that include the  
9 use of opiates;

10 (4) A physician who uses opiate therapy to relieve severe  
11 acute pain or severe chronic pain may prescribe a  
12 dosage deemed medically necessary to relieve the pain;

13 (5) A patient may voluntarily request that the patient's  
14 physician provide an identifying notice of the  
15 prescription for purposes of emergency treatment or  
16 law enforcement identification; and

17 (6) With regard to pain patients, the application of this  
18 section shall be guided by the medical principle that  
19 physical tolerance and dependence are normal  
20 consequences of sustained use of opiate medication,  
21 distinguishable from psychological dependency or  
22 addiction that bears no relationship to pain



1 experienced by a patient. For the purposes of this  
2 section, psychological dependency shall be  
3 characterized by a patient's compulsion to take a drug  
4 notwithstanding the fact that the patient knows the  
5 harmful and destructive effect of the drug on the  
6 patient. The distinction is one of treatment of pain  
7 as opposed to feeding a psychological need. A patient  
8 who suffers severe acute pain or severe chronic pain  
9 secondary to a diagnosis in any form of disease and  
10 chronic conditions may be entitled to receive a  
11 prescription of opiate medication for the treatment of  
12 the pain, if requested by that patient; provided that  
13 the patient is not addicted to the opiate; and  
14 provided further that the particular opiate is  
15 appropriate to the treatment of that pain. For  
16 purposes of this paragraph, the term "addicted" refers  
17 to a psychological dependence, rather than a  
18 progressive physical tolerance for the opiate to  
19 relieve the pain; provided that the term does not  
20 include a narcotic-dependent person as defined in  
21 section 329-40.

22 [~~6~~] (b) Nothing in this section shall be construed to:



- 1           ~~[(A)]~~ (1) Expand the authorized scope of practice of  
2                                   any licensed physician;
- 3           ~~[(B)]~~ (2) Limit any reporting or disciplinary  
4                                   provisions applicable to licensed physicians and  
5                                   surgeons who violate prescribing practices; and
- 6           ~~[(C)]~~ (3) Prohibit the discipline or prosecution of a  
7                                   licensed physician for:
- 8                           ~~[(i)]~~ (A) Failing to maintain complete, accurate,  
9                                   and current records that document the  
10                                  physical examination and medical history of  
11                                  a patient, the basis for the clinical  
12                                  diagnosis of a patient, and the treatment  
13                                  plan for a patient;
- 14                           ~~[(ii)]~~ (B) Writing false or fictitious  
15                                  prescriptions for controlled substances  
16                                  scheduled in the Federal Comprehensive Drug  
17                                  Abuse Prevention and Control Act of 1970, 21  
18                                  U.S.C. 801 et seq. or in chapter 329;
- 19                           ~~[(iii)]~~ (C) Prescribing, administering, or  
20                                  dispensing pharmaceuticals in violation of  
21                                  the provisions of the Federal Comprehensive  
22                                  Drug Abuse Prevention and Control Act of



1 1970, 21 U.S.C. 801 et seq. or of chapter  
2 329;

3 [~~(iv)~~] (D) Diverting medications prescribed for a  
4 patient to the licensed physician's own  
5 personal use; and

6 [~~(v)~~] (E) Causing, or assisting in causing, the  
7 suicide, euthanasia, or mercy killing of any  
8 individual; provided that it is not  
9 "causing, or assisting in causing, the  
10 suicide, euthanasia, or mercy killing of any  
11 individual" to prescribe, dispense, or  
12 administer medical treatment for the purpose  
13 of treating severe acute pain or severe  
14 chronic pain, even if the medical treatment  
15 may increase the risk of death, so long as  
16 the medical treatment is not also furnished  
17 for the purpose of causing, or the purpose  
18 of assisting in causing, death for any  
19 reason."

20 SECTION 3. Section 329-38, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:





1           "(b) A schedule II controlled substance prescription  
2 shall:

3           (1) Be filled within [~~three~~] seven days following the date  
4           the prescription was issued to the patient; and

5           (2) Be supplied to a patient only if the prescription has  
6           been filled and held by the pharmacy for not more than  
7           seven days."

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

10          SECTION 5. This Act shall take effect on January 1, 2050.



**Report Title:**

Controlled Substances; Pain Patient's Bill of Rights

**Description:**

Clarifies the provisions for prescribing opiate medication for pain treatment. Extends the time limit within which schedule II controlled substance prescriptions must be filled. (HB3242 HD1)

