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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 PART I

2 SECTION 1. According to the American College of  
3 Physicians, internal medicine section, most pain from disease  
4 and chronic conditions can be controlled or even eliminated.  
5 For example, even advanced pain can be controlled in 90 to 99  
6 per cent of cases. In nine out of ten cases, physicians can  
7 control pain by using pills alone without having to use  
8 injections, operations, or other methods. In those few cases in  
9 which pain from disease and chronic conditions cannot be  
10 eliminated completely, it can be reduced so that the person can  
11 live with the pain from day to day and still accomplish  
12 activities that are important to the person. The American  
13 College of Physicians further states that:

- 14 (1) Pain from disease and chronic conditions can be  
15 controlled;
- 16 (2) The person with advanced pain from disease and chronic  
17 conditions has a right to effective pain control;



- 1 (3) Part of the job of a caregiver is to ensure effective  
2 pain control;
- 3 (4) Pain control takes time to achieve, so persistence is  
4 vital;
- 5 (5) Only the person with pain knows what the pain is like;  
6 and
- 7 (6) Never assume that pain means the underlying medical  
8 condition is spreading.

9 Furthermore, a pain initiative in Texas states that, while  
10 alternatives to drug treatment such as biofeedback, hypnosis,  
11 and acupuncture can be effective for some types of pain:

- 12 (1) Most pain patients will also require narcotics;
- 13 (2) Addiction is extremely rare when narcotics are used to  
14 treat pain from disease and chronic conditions; and
- 15 (3) Virtually all pain from disease and chronic conditions  
16 can be relieved.

17 A 1999 national pain survey revealed that 50,000,000  
18 Americans suffer from chronic pain as a result of chronic  
19 disease, disorder, or accident. It was estimated that another  
20 25,000,000 people live with acute pain from accidents or  
21 surgery. Pain is a silent epidemic that affects the lives of  
22 individuals and their families. According to the American



1 Academy of Pain Management, effective pain and symptom  
2 management is an ethical obligation for all health care  
3 providers and organizations.

4 The 2000 publication, *Pain in America: A Research Report*,  
5 showed that, although 80 per cent of Americans feel that pain is  
6 a natural part of aging, only 64 per cent would seek medical  
7 treatment for intolerable pain. The report also found that 60  
8 per cent of Americans believe that pain is "just something you  
9 have to live with." The perception of 28 per cent of the  
10 population is that there is no effective treatment for pain. It  
11 is thus important for individuals, their families, and their  
12 caregivers to know that there are many effective treatment  
13 options for the management of pain and that people do not have  
14 to suffer from chronic, debilitating, intolerable pain.

15 The legislature finds that Hawaii law should permit pain  
16 patients to be prescribed appropriate narcotic pain medication.  
17 The legislature further finds that pain patients deserve  
18 appropriate medical care that relieves the debilitating and  
19 intolerable discomforts of pain as much as possible, so that  
20 they can lead normal lives to the greatest extent possible and  
21 so that their caregivers can be relieved of stress and anxiety



1 in witnessing the ravaging effects of pain on the quality of  
2 life of the pain patient in their care.

3 The purpose of this part is to clarify a pain patient's  
4 right to be prescribed controlled substances to relieve pain.

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

7 "[+]§327H-2[+] **Bill of rights.** (a) The pain patient's  
8 bill of rights includes the following:

9 (1) A patient who suffers from severe acute pain or severe  
10 chronic pain has the option to request or reject the  
11 use of any or all modalities to relieve the pain;

12 (2) A patient who suffers from severe acute pain or severe  
13 chronic pain has the option to choose from appropriate  
14 pharmacologic treatment options to relieve severe  
15 acute pain or severe chronic pain, including opiate  
16 medications, without first having to submit to an  
17 invasive medical procedure.

18 For purposes of this paragraph, "invasive medical  
19 procedure" means surgery, destruction of a nerve or  
20 other body tissue by manipulation, or the implantation  
21 of a drug delivery system or device;



- 1 (3) A patient's physician may refuse to prescribe opiate  
2 medication for a patient who requests a treatment for  
3 severe acute pain or severe chronic pain. However,  
4 that physician may inform the patient of physicians  
5 who are qualified to treat severe acute pain and  
6 severe chronic pain employing methods that include the  
7 use of opiates;
- 8 (4) A physician who uses opiate therapy to relieve severe  
9 acute pain or severe chronic pain may prescribe a  
10 dosage deemed medically necessary to relieve the pain;
- 11 (5) A patient may voluntarily request that the patient's  
12 physician provide an identifying notice of the  
13 prescription for purposes of emergency treatment or  
14 law enforcement identification; and
- 15 (6) With regard to pain patients, the application of this  
16 section shall be guided by the medical principle that  
17 physical tolerance and dependence are normal  
18 consequences of sustained use of opiate medication,  
19 distinguishable from psychological dependency or  
20 addiction that bears no relationship to pain  
21 experienced by a patient. For the purposes of this  
22 section, psychological dependency shall be



1 characterized by a patient's compulsion to take a drug  
2 notwithstanding the fact that the patient knows the  
3 harmful and destructive effect of the drug on the  
4 patient. The distinction is one of treatment of pain  
5 as opposed to feeding a psychological need. A patient  
6 who suffers severe acute pain or severe chronic pain  
7 secondary to a diagnosis in any form of disease and  
8 chronic conditions may be entitled to receive a  
9 prescription of opiate medication for the treatment of  
10 the pain, if requested by that patient; provided that:

11 (A) The particular opiate is appropriate to the  
12 treatment of that pain; and

13 (B) The patient is not addicted to the opiate. For  
14 the purposes of this subparagraph, the term  
15 "addicted" refers to a psychological dependence,  
16 rather than a progressive physical tolerance for  
17 the opiate to relieve the pain; provided that the  
18 term does not include a narcotic-dependent person  
19 as defined in section 329-40.

20 [~~6~~] (b) Nothing in this section shall be construed to:

21 [~~A~~] (1) Expand the authorized scope of practice of  
22 any licensed physician;



1           ~~[(B)]~~   (2)   Limit any reporting or disciplinary  
2                                   provisions applicable to licensed physicians and  
3                                   surgeons who violate prescribing practices; and

4           ~~[(C)]~~   (3)   Prohibit the discipline or prosecution of a  
5                                   licensed physician for:

6                   ~~[(i)]~~   (A)   Failing to maintain complete, accurate,  
7                                   and current records that document the  
8                                   physical examination and medical history of  
9                                   a patient, the basis for the clinical  
10                                  diagnosis of a patient, and the treatment  
11                                  plan for a patient;

12           ~~[(ii)]~~   (B)   Writing false or fictitious  
13                                  prescriptions for controlled substances  
14                                  scheduled in the Federal Comprehensive Drug  
15                                  Abuse Prevention and Control Act of 1970, 21  
16                                  U.S.C. 801 et seq. or in chapter 329;

17           ~~[(iii)]~~   (C)   Prescribing, administering, or  
18                                  dispensing pharmaceuticals in violation of  
19                                  the provisions of the Federal Comprehensive  
20                                  Drug Abuse Prevention and Control Act of  
21                                  1970, 21 U.S.C. 801 et seq. or of chapter  
22                                  329;



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

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

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

20           "(b) A schedule II controlled substance prescription  
21           shall:





- 1 (1) Be filled within [~~three~~] seven days following the date  
2 the prescription was issued to the patient; and
- 3 (2) Be supplied to a patient only if the prescription has  
4 been filled and held by the pharmacy for not more than  
5 seven days."

## 6 PART II

7 SECTION 4. The legislature finds that many of the  
8 residents of Hawaii are increasingly unable to obtain timely and  
9 appropriate health care because of physician and dentist  
10 shortages. These shortages primarily affect the rural areas of  
11 our state. In the area of medical services, they are especially  
12 acute in disciplines such as family practice,  
13 obstetrics/gynecology, and orthopedics.

14 The legislature further finds that the increasingly high  
15 cost of a physician's professional education requires physicians  
16 to seek out the higher incomes that allow them to repay their  
17 student loans. However, physician salaries in rural shortage  
18 areas are often lower than those in nonshortage areas.

19 Loan repayment programs have been successfully used in  
20 Hawaii to increase the number of educators serving in hard-to-  
21 fill teaching positions, and can also be used to encourage and  
22 enable physicians and dentists to provide care in shortage



1 areas. Incentives such as stipends can be provided to  
2 physicians and dentists to offset the lower salaries offered in  
3 shortage areas. Further, making the enterprise zone business  
4 tax credit and general excise tax exemption available to  
5 physicians and dentists who practice in those zones provides  
6 another incentive that will increase access to health care  
7 professionals in Hawaii's underserved areas.

8 PART III

9 SECTION 5. The purpose of this part is to establish the  
10 Hawaii health corps that will provide:

- 11 (1) Loan repayment for physicians and dentists who agree  
12 to work in health professional shortage areas of the  
13 state and as first responders during civil defense and  
14 other emergencies; and
- 15 (2) Stipends for physicians and dentists who agree to  
16 provide services in health professional shortage areas  
17 of the state and as first responders during civil  
18 defense and other emergencies.

19 SECTION 6. The Hawaii Revised Statutes is amended by  
20 adding a new chapter to be appropriately designated and to read  
21 as follows:



1 "CHAPTER

2 HAWAII HEALTH CORPS

3 § -1 Definitions. As used in this chapter, unless the  
4 context requires otherwise:

5 "Dentist" means a person licensed under chapter 448.

6 "Department" means the department of health.

7 "Director" means the director of health.

8 "Eligible education and training program" means an  
9 education and training program that leads to eligibility for  
10 licensure under chapter 453 or 448.

11 "Health professional shortage area" means:

- 12 (1) Areas of the state designated by the Health Resources
- 13 and Services Administration of the United States
- 14 Department of Health and Human Services as having
- 15 shortages of primary medical care, mental health care,
- 16 or dental care providers;
- 17 (2) Counties with a population of less than five hundred
- 18 thousand residents;
- 19 (3) Rural areas of the state; and
- 20 (4) Areas served by community health centers.

21 "Loan repayment" means the payment of the lesser of up to  
22 \$30,000 per year for not more than five years or twenty per cent



1 of the amount outstanding on a loan or loans to pay for an  
2 eligible education and training program.

3 "Physician" means a person licensed under chapter 453.

4 "Program" means the Hawaii health corps program.

5 "Service obligation" means the physician's or dentist's  
6 duty to provide health care services in a health professional  
7 shortage area of the state and during periods declared to be an  
8 emergency by the governor, undertaken in exchange for program  
9 loan repayment or a physician or dentist stipend from the  
10 program.

11 **§ -2 Hawaii health corps program established.** The  
12 Hawaii health corps program is established to encourage  
13 physicians and dentists to serve in health professional shortage  
14 areas. The program shall be administered by the department. In  
15 administering this program, the department shall, in conjunction  
16 with the John A. Burns school of medicine:

17 (1) Adopt rules and develop guidelines to administer the  
18 program;

19 (2) Identify and designate health professional shortage  
20 areas;



- 1 (3) Establish criteria for the selection, and select  
2 physicians and dentists to participate in the stipend  
3 portion of the program;
- 4 (4) Define and determine compliance with the program  
5 service obligations;
- 6 (5) Collect and manage reimbursements from loan repayment  
7 recipients who do not meet their service obligations  
8 under the program;
- 9 (6) Publicize the program, particularly to maximize  
10 participation by individuals who live in health  
11 professional shortage areas;
- 12 (7) Solicit and accept grants and donations from public  
13 and private sources for the program; and
- 14 (8) Establish criteria and procedures for calling program  
15 participants into service during a civil defense or  
16 other emergency.

17 **§ -3 Hawaii rural health care provider loan repayment**  
18 **program.** (a) There is created the Hawaii rural health care  
19 provider loan repayment program to be administered by the  
20 department in partnership with a financial institution whose  
21 operations are principally conducted in Hawaii. The Hawaii  
22 rural health care provider program shall provide loan repayments



1 to not more than twenty physicians or dentists per year who  
2 commit to:

3 (1) Serve as a physician in a health professional shortage  
4 area of the state, at the same practice site for:

5 (A) Three consecutive years for graduates of the John  
6 A. Burns school of medicine; and

7 (B) Five consecutive years for all other licensed  
8 physicians or dentists who graduated from an  
9 eligible education and training program within  
10 the United States;

11 and

12 (2) At any time during the three or five years of service  
13 under paragraph (1), serve as a physician first  
14 responder during a period declared by the governor to  
15 be an emergency;

16 provided that there shall be not more than one hundred  
17 participants at any given time; provided further that not more  
18 than fifteen per cent of the health care providers selected  
19 annually to receive loan repayments shall be dentists.

20 (b) Eligibility for loan repayments shall be determined by  
21 the department on a competitive basis. Preference for loan  
22 repayments shall be given to physicians and dentists who reside



1 in or were residents of a health professional shortage area, and  
2 physicians who graduated from the John A. Burns school of  
3 medicine.

4 (c) If a loan repayment recipient fails to satisfy the  
5 recipient's service obligation, the recipient shall reimburse  
6 the program for the total amount of loan repayments received  
7 under the program, in periodic installments within a period not  
8 to exceed five years, commencing three months after the loan  
9 repayment recipient fails to honor the service obligation. The  
10 department may charge initial late fees, and the costs of  
11 collecting delinquent reimbursements of loan repayments.

12 (d) In accordance with chapter 103D, the department may  
13 enter into written contracts with collection agencies to collect  
14 delinquent reimbursements of loan repayments. All payments  
15 collected, exclusive of a collection agency's commissions, shall  
16 revert and be credited to the Hawaii health corps fund. A  
17 collection agency that enters into a written contract with the  
18 department to collect delinquent reimbursements of loan  
19 repayments pursuant to this section may collect a commission  
20 from the debtor in accordance with the terms of, and up to the  
21 amounts authorized in, the written contract.



1 (e) Liability for reimbursement of a loan repayment may be  
2 waived or the conditions of reimbursement adjusted for loan  
3 repayment recipients who fail to meet their service obligation  
4 for good cause. Liability for reimbursement of a loan repayment  
5 shall be canceled upon the death or total disability of the  
6 borrower. As used in this subsection, "total disability" shall  
7 have the same meaning as "person totally disabled" in section  
8 235-1.

9 **§ -4 Hawaii health corps stipend.** (a) The department  
10 shall award stipends of not more than \$10,000 per year to not  
11 more than one hundred physicians or dentists per year who agree  
12 to:

13 (1) Provide during the stipend year not less than fifty  
14 per cent of their services in a health professional  
15 shortage area or not less than ten per cent of their  
16 services to uninsured patients; and

17 (2) Provide first responder emergency services during  
18 civil defense and other emergencies proclaimed under  
19 section 127-10, 128-7, or 209-2.

20 (b) No limitation shall be placed on expenditure of the  
21 stipend by the recipient. The department shall determine the  
22 manner and timing of stipend payments to ensure performance of





1 the stipend service obligation. Not more than ten years of  
2 stipends shall be paid to any one recipient. The recipient of a  
3 program loan repayment is ineligible for a stipend.

4       **§ -5 Hawaii health corps first responder service**  
5 **obligation.** In the event of a civil defense or other emergency,  
6 proclaimed under section 127-10, 128-7, or 209-2, physicians and  
7 dentists participating in the Hawaii health corps program may be  
8 ordered into service by the governor as first responders to  
9 serve in areas of the state and in a capacity determined by the  
10 director.

11       **§ -6 Criteria for selecting loan repayment and stipend**  
12 **recipients.** The department shall establish a planning committee  
13 to assist the department in developing criteria for the  
14 selection of loan repayment and stipend recipients. The  
15 department shall include on the planning committee  
16 representatives of the department, the University of Hawaii John  
17 A. Burns school of medicine, health care facilities, provider  
18 groups, consumers, community and technical colleges, county  
19 government, and other appropriate public and private agencies  
20 and organizations.

21       **§ -7 Rules.** The department shall adopt rules to  
22 implement the program. The rules shall be adopted pursuant to



1 chapter 91, but shall be exempt from public notice and public  
2 hearing requirements.

3 **§ -8 Hawaii health corps fund.** (a) There is  
4 established in the treasury of the State the Hawaii health corps  
5 fund, to be administered by the department. Any funds  
6 appropriated by the legislature for the program, gifts,  
7 donations, and grants from public agencies and private persons,  
8 reimbursements of loan repayments, proceeds of the operations of  
9 the program, and interest earned or accrued on moneys deposited  
10 in the fund shall become a part of the fund.

11 (b) The department may expend moneys from the fund for the  
12 purposes of this chapter."

13 SECTION 7. The department of health shall implement the  
14 Hawaii health corps program no later than June 30, 2009.

15 The director of health shall report to the legislature on  
16 the status of the Hawaii health corps program no later than  
17 twenty days prior to the convening of each regular session of  
18 the legislature beginning with the regular session of 2009.

19 PART IV

20 SECTION 8. The purpose of this part is to increase access  
21 to quality health care in health care professional shortage  
22 areas by making the enterprise zone business tax credit, general



1 excise tax exemption, and other business incentives available to  
2 physicians and dentists who establish or maintain practices in  
3 areas designated as enterprise zones.

4 SECTION 9. Section 209E-2, Hawaii Revised Statutes, is  
5 amended by amending the definitions of "medical and health care  
6 services" and "service business" to read:

7 "Medical and health care services" means diagnosis,  
8 treatment, or other acts permissible under chapters 448 and 453,  
9 but does not include medical research, clinical trials, and  
10 telemedicine[, ~~but not routine medical treatment or services~~].

11 "Service business" means any corporation, partnership, or  
12 sole proprietorship that repairs ships, aircraft, or assisted  
13 technology equipment, provides telecommunication services,  
14 information technology design and production services, medical  
15 and health care services, [Ø] education and training services,  
16 or performs medical research, clinical trials, or telemedicine,  
17 as defined in this chapter."

18 SECTION 10. Section 209E-9, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§209E-9 Eligibility; qualified business; sale of property**  
21 **or services.** (a) Any business firm may be eligible to be



1 designated a qualified business for purposes of this chapter if  
2 the business:

3 (1) Begins the operation of a trade or business within an  
4 enterprise zone;

5 (2) During each taxable year has at least fifty per cent  
6 of its enterprise zone establishment's gross receipts  
7 attributable to the active conduct of trade or  
8 business within the enterprise zone;

9 (3) Increases its average annual number of full-time  
10 employees by at least ten per cent by the end of its  
11 first tax year of participation; and

12 (4) During each subsequent taxable year at least maintains  
13 that higher level of employment.

14 (b) A business firm also may be eligible to be designated  
15 a qualified business for purposes of this chapter if the  
16 business:

17 (1) Is actively engaged in the conduct of a trade or  
18 business in an area immediately prior to an area being  
19 designated an enterprise zone;

20 (2) Meets the requirements of subsection (a)(2); and

21 (3) Increases its average annual number of full-time  
22 employees employed at the business' establishment or



1 establishments located within the enterprise zone by  
2 at least ten per cent annually.

3 (c) Subsections (a) and (b) notwithstanding, any business  
4 firm that is engaged in providing medical and health care  
5 services may be eligible to be designated a qualified business  
6 for purposes of this chapter if:

- 7 (1) The business either meets the requirements of  
8 subsection (a)(1) and (2) or (b)(1) and (2); and  
9 (2) The business is located within a health professional  
10 shortage area of the state designated by the Health  
11 Resources and Services Administration of the United  
12 States Department of Health and Human Services as  
13 having shortages of primary medical care, mental  
14 health care, or dental care providers, and shall  
15 include any county with a population of less than five  
16 hundred thousand residents, rural areas of the state,  
17 areas served by community health centers, and any  
18 other area identified by the department of health.

19 ~~[(e)]~~ (d) After designation as an enterprise zone, each  
20 qualified business firm in the zone shall submit annually to the  
21 department an approved form supplied by the department that  
22 provides the information necessary for the department to



1 determine if the business firm qualifies as a qualified  
2 business. The approved form shall be submitted by each business  
3 to the governing body of the county in which the enterprise zone  
4 is located, then forwarded to the department by the governing  
5 body of the county.

6 ~~[(d)]~~ (e) The form referred to in subsection (c) shall be  
7 prima facie evidence of the eligibility of a business for the  
8 purposes of this section.

9 ~~[(e)]~~ (f) Tangible personal property shall be sold at an  
10 establishment of a qualified business within an enterprise zone  
11 and the transfer of title to the buyer of the tangible personal  
12 property shall take place in the same enterprise zone in which  
13 the tangible personal property is sold. Services shall be sold  
14 at an establishment of a qualified business engaged in a service  
15 business within an enterprise zone and the services shall be  
16 delivered in the same enterprise zone in which sold. Any  
17 services rendered outside an enterprise zone shall not be deemed  
18 to be the services of a qualified business.

19 ~~[(f)]~~ (g) For any fiscal year that includes September 11,  
20 2001, a business may use its average annual number of full-time  
21 employees as of August 31, 2001--rather than its average annual  
22 number at the end of its fiscal year including September 11,



1 2001--if necessary to meet the requirements of subsection (a)(3)  
2 and (4) or (b)(3). A business may also use its average annual  
3 number of full-time employees at the end of its fiscal year that  
4 includes September 11, 2001, as its base number of full-time  
5 employees if necessary to meet the requirements of subsection  
6 (a)(3) and (4) or (b)(3) in future fiscal years."

7 PART V

8 SECTION 11. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$ or so much  
10 thereof as may be necessary for fiscal year 2008-2009 for the  
11 creation of the Hawaii health corps program.

12 The sum appropriated shall be expended by the department of  
13 health for the purposes of part III of this Act.

14 SECTION 12. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$ or so much  
16 thereof as may be necessary for fiscal year 2008-2009 for the  
17 administration of health care enterprise zones.

18 The sum appropriated shall be expended by the department of  
19 business, economic development, and tourism for the purposes of  
20 part IV of this Act.



1 PART VI

2 SECTION 13. Statutory material to be repealed is bracketed  
3 and stricken. New statutory material is underscored.

4 SECTION 14. This Act shall take effect upon its approval;  
5 provided that parts III, IV, and V of this Act shall take effect  
6 on July 1, 2020, and part IV shall apply to taxable years  
7 beginning and gross proceeds received after December 31, 2008.





**Report Title:**

Controlled Substances; Pain Patient's Bill of Rights

**Description:**

Clarifies the prescribing of opiates for pain treatment. Extends the time limit in which scheduled II controlled substances prescriptions must be filled. Establishes the Hawaii Health Corps that will provide loan repayment and stipends for physicians and dentists who agree to work in health professional shortage areas and as first responders during civil defense and other emergencies. Expands the Enterprise Zone Business Tax Credit, general excise tax exemption, and other business incentives to include physicians and dentists who establish or maintain practices in areas designated as enterprise zones. Appropriates funds. (SB2157 HD1)

