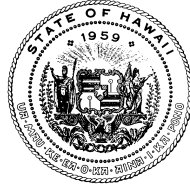


SB2352

SD1



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Senate Committee on Judiciary and Labor

SB2352, SD1, Relating to Psychiatric Facilities

Testimony of Lynn N. Fallin
Deputy Director, Behavioral Health Administration

Friday, February 21, 2014, 11:30 a.m., Room 016

1 **Department's Position:** The Department of Health (DOH) strongly supports this bill.

2 **Fiscal Implications:** None.

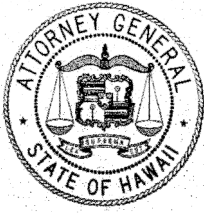
3 **Purpose and Justification:** The purpose of the bill is to modify the general notification requirements
4 that the patient is ready for discharge under the Hawaii Revised Statutes (HRS) 334-60.7.

5 The DOH supports this bill as it streamlines the notification process prior to discharge of a
6 patient civilly committed pursuant to criminal statutes, allowing for a simplified discharge process while
7 safeguarding the right of individuals who require notification of the patients' discharge to object.

8 Recommendations made by the DOH in our January 28, 2014 testimony are reflected in SB2352,
9 SD1, including changing HRS 334-60.7, lines 14-16, page 1, to now read: This section shall only apply
10 to civil commitments as a direct result of legal proceedings under chapters 704 and 706.

11 We are open to changing the requirement that a hearing be held, "within seventy-two hours" to,
12 "as soon as possible, and prior to the termination of the current commitment order."

13 Thank you for the opportunity to provide testimony on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

S.B. NO. 2352, S.D. 1, RELATING TO PSYCHIATRIC FACILITIES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, February 21, 2014

TIME: 11:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Julio C. Herrera, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General supports the intent of this bill, but has some comments and suggested changes.

This bill amends section 334-60.7, Hawaii Revised Statutes (HRS), relating to the discharge of a patient from a psychiatric facility following a civil commitment. Specifically, it exempts private psychiatric hospitals from giving notice of a patient's discharge from a purely civil commitment. However, notice is still required to be given in forensic cases originating from criminal proceedings.

For purposes of clarification, we would like to explain the current practice, as it relates to proposed discharges from psychiatric facilities, distinguish between two different scenarios, and offer some suggested changes to this bill based upon some of the concerns raised in prior testimony.

A person may be involved in the criminal justice system, and during the pendency of these proceedings, may be found unfit to proceed under chapter 704, HRS. The court hearing the criminal matter may then commit the person to the custody of the Director of Health for detention, care, and treatment, with certain limitations, or release them on conditions, pursuant to section 704-406, HRS. The commitment period may vary depending on the type of charge filed by the prosecuting attorney. Likewise, a person may be civilly committed in lieu of prosecution, pursuant to section 706-607, HRS, for a period of up to ninety days.

In the first scenario, the Hawaii State Hospital (HSH) may decide prior to the expiration of any commitment period that the person meets criteria for involuntary hospitalization and,

rather than release them to the community, will file a petition with the Family Court pursuant to chapter 334, HRS. The prosecuting attorney's office is not given notice of these proceedings as they are purely civil in nature. When said petition is granted by the Family Court, orders are entered and those entitled to receive notice of intent to discharge are specified in it. If and when the HSH contemplates early discharge, notice is given pursuant to section 334-60.7, HRS, which typically does not include the prosecuting attorney. If an objection to the notice is filed timely with the Family Court, the court will set a hearing to determine the appropriateness of the early discharge and make a ruling after the hearing.

In the second scenario, the HSH may decide, prior to the expiration of the original commitment, that, because the person does not meet criteria for involuntary hospitalization, it will either try to discharge the person early, or let the commitment period expire and not petition the Family Court for involuntary hospitalization. As the original commitment orders do not specify who is to receive notice of intent to discharge, and in light of sections 334-60.7 and 334-76, HRS, a courtesy letter is sent to the prosecuting attorney and the public defender listed in the original order, informing them of the impending discharge. However, it is not clear what recourse there is to object to the notice, because the Family Court cannot review the appropriateness of the intended discharge because its jurisdiction will not have been invoked. However, the victim in the criminal matter can at least receive word from the prosecuting attorney that the person will be released on a date certain.

Thus, the Department of the Attorney General recommends that the modifications below be made to this bill. Starting with page 1, line 14, subsection (b) should be modified slightly to read as follows:

“(b) This section shall apply only to civil commitments that result directly from legal proceedings under chapters 704 and 706.”

Starting on page 1, line 16, subsection (c) should read as follows:

“(c) The notice and a certificate of service shall be filed with the family court and served [personally or by certified] by mail on those persons whom the order of commitment specifies as entitled to receive notice[-], at the person's last known address. Notice shall also be sent to the prosecuting attorney of the county from which the person was

originally committed, by facsimile or electronically, for the sole purpose of victim notification.”

This amendment to subsection (c) addresses the concerns raised in prior testimony from the prosecuting attorney’s office, as they relate to the first scenario described above, but limits their role in the family court matter to that of notifying the victim(s) in the criminal matter. In addition, this amendment addresses one of the concerns raised in the Judiciary’s prior testimony, by requiring the notice and a certificate of service to be filed with the Family Court, which triggers the five-day waiting period within which to file any objections with the court.

Next, we would recommend adding the term “calendar” to subsection (e) in between “five” and “days” on page 2, line 5, for the purpose of determining when an objection is considered timely filed.

Next, we would recommend amending subsection (f) starting on page 2, line 9 to read as follows:

“(f) If any person specified as entitled to receive notice files a written objection to the discharge or to the patient’s admission to voluntary inpatient treatment on the grounds that the patient is a proper subject for commitment, and files a certificate of service, the family court shall conduct a hearing as soon as possible, prior to the termination of the current commitment order, to determine if the patient still meets criteria for involuntary hospitalization in section 334-60.2. The person filing the objection must also notify the psychiatric facility by telephone on the date of the filing.”

These amendments should address the remaining concerns raised in the Judiciary’s prior testimony.

Furthermore, we would recommend inserting a new section 2 to amend section 334-76, HRS, as follows:

SECTION 2. Section 334-76, Hawaii Revised Statutes, is amended to read as follows:

“§334-76 Discharge from custody. (a) Subject to any special requirements of law as provided in sections 704-406, 704-411, and 706-607 or elsewhere, with respect to patients committed on court order[;] from a criminal proceeding, the administrator of a psychiatric facility, pursuant to section 334-60.7, shall ~~send~~;

(1) Send a notice of intent to discharge or notice of the patient's admission to voluntary inpatient treatment to those persons specified in the order of commitment as entitled to receive notice of intent to discharge by mail at their last known address; and [the]

(2) Send a notice of intent to discharge or notice of the patient's admission to voluntary inpatient treatment to the prosecuting attorney of the county from which the person was originally committed, by facsimile or electronically.

(b) The administrator or the deputy or the physician assuming medical responsibility for the patient shall discharge an involuntary patient when the patient is no longer a proper subject for commitment, as determined by the criteria for involuntary hospitalization in section 334-60.2.

(c) Nothing in this section shall preclude a facility from accepting for voluntary inpatient treatment, in accordance with the procedures in section 334-60.1, a patient for whom the facility contemplates discharge pursuant to section 334-60.7 and who voluntarily agrees to further hospitalization after the period of commitment has expired or where the patient is no longer a proper subject for commitment.”

These amendments to section 334-76, address the concerns raised in prior testimony from the prosecuting attorney's office, as they relate to the second scenario described above, by requiring what is already common practice in these situations.

We respectfully ask the Committee to pass this measure with the suggested modifications.



Friday – Friday, February 21, 2014 – 11:30am
Conference Room 016

The Senate Committee on Judiciary and Labor

To: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: **Testimony in Support**
SB 2352, SD 1 — Relating to Psychiatric Facilities

The Healthcare Association of Hawaii (HAH) is a 116-member organization that includes all of the acute care hospitals in Hawaii, the majority of long term care facilities, all the Medicare-certified home health agencies, all hospice programs, as well as other healthcare organizations including durable medical equipment, air and ground ambulance, blood bank and respiratory therapy. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing nearly 20,000 people statewide.

Thank you for the opportunity to testify in support of SB 2352, SD 1, which would alter the discharge process for mental health patients being cared for in Hawaii's hospitals by (1) allowing hospitals to discharge civil commitment patients without a court order once a physician has determined them ready for discharge; and (2) extending discharge authority to attending physicians and changing notice and hearing requirements for discharge petitions relating to patients committed under sections 704-406 and 706-607.

Specifically, SB 2352, SD 1 would permit hospitals that care for patients under court order for civil commitment for up to ninety days to discharge the patient when the attending physician determines the patient is ready for discharge without having to first obtain a court order. This would permit hospitals to discharge patients who are ready to be discharged, but must remain involuntarily committed due to difficulty in obtaining a court hearing and order for discharge. These patients are people who have committed no crime, and have been involuntarily committed by a court for rehabilitative treatment and care for up to ninety days—yet these patients are routinely held involuntarily even when the attending physician has determined that they are ready to be discharged. And while these patients remain involuntarily committed in our hospitals, they take up precious resources that could be used to serve other patients in need.

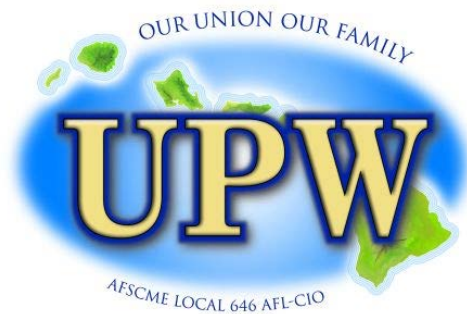
SB 2352, SD 1 would also allow attending physicians, in addition to administrators, to discharge patients, and would also make changes to the notice and hearing requirements under section 334-60.7 for

[Phone: \(808\) 521-8961](tel:(808)521-8961) | [Fax: \(808\) 599-2879](tel:(808)599-2879) | HAH.org | 707 Richards Street, PH2 - Honolulu, HI 96813

patients who have been committed by a court for treatment and care under section 704-406, for a finding of unfitness to proceed in a criminal matter, or 706-607, for civil commitment in lieu of prosecution or sentence. These changes would make streamline the discharge process for these patients, and would make important services available to other members of the community.

HAH is committed to working with providers across the continuum of care toward a healthcare system that offers the best possible quality of care to the people of Hawaii. SB 2352, SD 1 would assist HAH in this mission by making much needed improvements to Hawaii's healthcare system, assisting rehabilitated patients seeking discharge, and making vital mental health resources available to Hawaii's citizens.

Thank you for the opportunity to testify in support of SB 2352, SD 1.



THE HAWAII STATE SENATE
The Twenty-Seventh Legislature
Regular Session of 2014

COMMITTEE ON JUDICIARY AND LABOR
The Honorable Sen. Clayton Hee, Chair
The Honorable Sen. Maile S.L. Shimabukuro, Vice Chair

DATE OF HEARING: Friday, February 21, 2014
TIME OF HEARING: 11:30 AM
PLACE OF HEARING: Conference Room 016

TESTIMONY ON SB2352 SD1 RELATING TO PSYCHIATRIC FACILITIES

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports SB2352 SD1, which requires the administrator or attending physician of a psychiatric facility to provide notice of intent to discharge a patient or patient's admission to voluntary treatment, applies section 334-60.7, HRS, to only civil commitments as a direct result of legal proceedings, requires the notice to be served by mail at the person's last known address, unless the person waives this right in writing, and requires courts to conduct hearings within seventy-two hours to determine if the patient still meets the criteria for involuntary hospitalization.

We ask that you pass this bill.

Thank you for the opportunity to testify on this measure.



S.B. 2352, S.D. 1
Relating to Psychiatric Facilities
Senate Committee on Judiciary and Labor
February 21, 2014, 11:30am

Thank you for the opportunity to provide testimony in support of SB 2352, SD1, Relating to Psychiatric Facilities.

Under 334-59 HRS, when the Honolulu Police Department detains a person who displays substance abuse or mental illness, and is a danger to self or others, the HPD officer is directed to contact the DOH designee, an HPD Psychologist. The HPD psychologist, via a verbal phone call by the HPD officer on the scene, determines if the person is in need of an emergency mental exam or if the person should be sent to the cellblock for criminal charges. If the person is determined to need a mental health exam, HPD transports the person to one of the MH1-hospitals, as designated by DOH, including QMC. If it is determined the person is in need of involuntary hospitalization, the court is petitioned by the AGs (in conjunction with the hospital) and the court will civilly commit the patient for up to 90 days to one of the licensed psychiatric facilities. This entire process is laid out in statute. It does not forensically encumber the individual. The person is not charged with any crime, at any time.

Often, the attending physician at the licensed psychiatric facility (ie. Queens and Castle) determines that the committed individual is ready to be discharged prior to the expiration of the ninety-day commitment order. However, the hospital cannot discharge the person until the extensive and time consuming requirements of section 334-60.7, Hawaii Revised Statutes, are met. The current process has been known to take upwards of two weeks. Unlike the commitment process, the entire discharge process is initiated and completed by the hospital facility staff and legal department, with no assistance by the Attorney General.

This proposed legislation, developed in collaboration with the Department of Health and the Department of the Attorney General, would exempt discharges of civil commitment patients from section 334-60.7, allowing the discharge of strictly non-forensic, civilly committed patients where the attending physician determines that the person is ready for release. The patient will be discharged with a discharge plan, including care coordination, but the prolonged delay in discharge caused by the current statute would be remedied. This will benefit the patient who no longer requires treatment in a restrictive environment like a hospital setting as well assisting the hospitals in bed space management in appropriately opening of bed space for a new patient who needs hospitalization.

Additionally, HAH's proposed legislation would alter the notice of discharge requirements for persons committed under sections 704-406 (Effect of finding of unfit to proceed) and 707-607 (civil commitment in lieu of prosecution), by allowing the attending physician to issue such order, and would also change notice and hearing requirements under the statute, which, too, will assist facilities like HSH and Kahi Mohala (under contract with HSH) to discharge its 704-406 and 707-607 encumbered patients in a more efficient manner, but still maintain requirements to inform interested parties of the patient's impending release. We defer to the Department of the Attorney General and the Department of Health for specific amendments related to this. .

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: toddhairgrove@hotmail.com
Subject: *Submitted testimony for SB2352 on Feb 21, 2014 11:30AM*
Date: Tuesday, February 18, 2014 7:24:22 PM

SB2352

Submitted on: 2/18/2014

Testimony for JDL on Feb 21, 2014 11:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Todd Hairgrove	Individual	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov