
A BILL FOR AN ACT

RELATING TO ORDERS FOR TREATMENT OVER OBJECTION.

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

1 SECTION 1. The legislature finds that the initiation of
2 treatment for patients admitted to the Hawaii state hospital
3 needs to be expedient to address patients' psychiatric symptoms
4 and protect the safety of the patient and others.

5 The legislature further finds that the Hawaii state
6 hospital is used primarily for forensic commitments, and that
7 addressing patients' psychiatric symptoms quickly at the
8 initiation of treatment will help maintain a safe and secure
9 therapeutic environment for patients and staff as well as have a
10 positive impact on the patients' length of stay.

11 The legislature additionally finds that the same can be
12 said for pretrial detainees and committed persons in the custody
13 of the department of public safety. Addressing the committed
14 person's psychiatric symptoms quickly helps maintain a safe and
15 secure environment for the individual involved and persons who
16 surround the committed person.



1 The legislature notes that the current method to obtain
2 an authorization to provide treatment over a patient's objection
3 is by a judicial hearing. Although dependent on circumstances,
4 the average time between the petition and judicial hearing is
5 nearly seventeen days. Other states have addressed the
6 variability and length of time before the judicial hearing by
7 developing a nonjudicial, administrative process to review and
8 authorize requests for treatment despite a patient's objections.

9 The purpose of this Act is to permit an administrative
10 order to overcome a patient's objection to psychiatric
11 treatment, establish criteria for issuance of the court or
12 administrative order, and establish criteria for an
13 administrative authorization process to determine whether the
14 administrative order should be issued.

15 SECTION 2. Chapter 334, Hawaii Revised Statutes, is
16 amended by adding a new part to be appropriately designated and
17 to read as follows:

18 "PART . ADMINISTRATION OF TREATMENT OVER THE PATIENT'S
19 OBJECTION

20 §334-A Criteria for issuance of court or administrative
21 order for treatment over the patient's objection. (a) A



1 patient who has been committed to a psychiatric facility for
2 involuntary hospitalization or who is in the custody of the
3 director and residing in a psychiatric facility may be ordered
4 to receive treatment over the patient's objection, including the
5 taking or application of medication, if the court, or
6 administrative panel through the administrative authorization
7 process established pursuant to section 334-B, finds that:

- 8 (1) The patient suffers from a physical or mental disease,
9 disorder, or defect;
- 10 (2) The patient is imminently dangerous to self or others;
- 11 (3) The proposed treatment is medically appropriate; and
- 12 (4) After considering less intrusive alternatives,
13 treatment is necessary to forestall the danger posed
14 by the patient.

15 (b) For the purposes of this section, "imminently
16 dangerous to self or others" means that, without intervention,
17 the person will likely become dangerous to self or dangerous to
18 others within the next forty-five days.

19 **§334-B Criteria for administrative authorization**
20 **process.** (a) A patient who is in the custody of the director
21 of health in a psychiatric facility may be ordered to receive



1 medical treatment over the patient's objection through an
2 administrative authorization process that includes the following
3 due process safeguards:

4 (1) The facility shall give notice to the patient of the
5 authorization process and the reasons for initiating
6 the process;

7 (2) The administrative panel shall consist of three
8 members with relevant clinical training and
9 experience, and who are not involved with the current
10 treatment of the patient;

11 (3) The patient shall have the right to attend the
12 hearing, receive assistance from an advisor, cross
13 examine witnesses, and present testimony, exhibits,
14 and witnesses; and

15 (4) The patient shall have the right to appeal the
16 decision of the administrative panel.

17 (b) The administrative process described by this section
18 is exempt from the contested case requirements of sections
19 91-8.5 to 91-15.

20 (c) The department may adopt rules, pursuant to chapter
21 91, to effectuate this part."



1 SECTION 3. Chapter 353, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§353- Criteria for administrative authorization process
5 for involuntary medical treatment. (a) A pretrial detainee or
6 committed person who is in the custody of the department may be
7 ordered to receive medical treatment over the pretrial
8 detainee's or committed person's objection through an
9 administrative authorization process that includes the following
10 due process safeguards:

11 (1) The department shall serve notice to the same persons,
12 and in the same manner, as set forth in section 353-
13 13.8(a), containing the information set forth in
14 section 353-13.8(b) (1) and (3) to (7);

15 (2) The administrative panel shall consist of three
16 members who have relevant clinical training and
17 experience and are not involved with the current
18 treatment of the pretrial detainee or committed
19 person;

20 (3) The pretrial detainee or committed person shall have
21 the right to attend the hearing, be represented by an



1 attorney, cross examine witnesses, and present
 2 testimony, exhibits, and witnesses; and
 3 (4) The pretrial detainee or committed person shall have
 4 the right to appeal the decision of the administrative
 5 panel.

6 (b) The administrative process described by this section
 7 is exempt from the contested case requirements of sections 91-
 8 8.5 to 91-15.

9 (c) The department may adopt rules, pursuant to chapter 91,
 10 to effectuate this section."

11 SECTION 4. Section 334E-2, Hawaii Revised Statutes, is
 12 amended by amending subsection (a) to read as follows:

13 "(a) Any patient in a psychiatric facility shall be
 14 afforded rights; and any psychiatric facility shall provide the
 15 rights to all patients; provided that when a patient is not able
 16 to exercise the patient's rights, the patient's legal guardian
 17 or legal representative shall have the authority to exercise the
 18 same on behalf of the patient. The rights shall include, but
 19 not be limited to, the following:

20 (1) Access to written rules and regulations with which the
 21 patient is expected to comply;



- 1 (2) Access to the facility's grievance procedure or to the
- 2 department of health as provided in section 334-3;
- 3 (3) Freedom from reprisal;
- 4 (4) Privacy, respect, and personal dignity;
- 5 (5) A humane environment;
- 6 (6) Freedom from discriminatory treatment based on race,
- 7 color, creed, national origin, age, and sex;
- 8 (7) A written treatment plan based on the individual
- 9 patient;
- 10 (8) Participation in the planning of the patient's
- 11 treatment plan;
- 12 (9) Refusal of treatment except in emergency situations or
- 13 ~~[where a court order exists,]~~ when a court order or an
- 14 administrative order pursuant to chapter 334,
- 15 part _____, has been issued;
- 16 (10) Refusal to participate in experimentation;
- 17 (11) The choice of physician if the physician chosen
- 18 agrees;
- 19 (12) A qualified, competent staff;
- 20 (13) A medical examination before initiation of non-
- 21 emergency treatment;



- 1 (14) Confidentiality of the patient's records;
- 2 (15) Access to the patient's records;
- 3 (16) Knowledge of rights withheld or removed by a court or
- 4 by law;
- 5 (17) Physical exercise and recreation;
- 6 (18) Adequate diet;
- 7 (19) Knowledge of the names and titles of staff members
- 8 with whom the patient has frequent contact;
- 9 (20) The right to work at the facility and fair
- 10 compensation for work done; provided that work is
- 11 available and is part of the patient's treatment plan;
- 12 (21) Visitation rights, unless the patient poses a danger
- 13 to self or others; provided that where visitation is
- 14 prohibited, the legal guardian or legal representative
- 15 shall be allowed to visit the patient upon request;
- 16 (22) Uncensored communication;
- 17 (23) Notice of and reasons for an impending transfer;
- 18 (24) Freedom from seclusion or restraint, except:
- 19 (A) When necessary to prevent injury to self or
- 20 others; [øx]
- 21 (B) When part of the treatment plan; or



1 (C) When necessary to preserve the rights of other
2 patients or staff;

3 (25) Disclosure to a court, at an involuntary civil
4 commitment hearing, of all treatment procedures which
5 have been administered prior to the hearing; and

6 (26) Receipt by the patient and the patient's guardian or
7 legal guardian, if the patient has one, of this
8 enunciation of rights at the time of admission."

9 SECTION 5. Section 353-13.6, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~§353-13.6 [Involuntary medical treatment criteria.]~~

12 Criteria for issuance of court or administrative order for
13 treatment over objection. (a) ~~[An inmate or detainee in the~~

14 ~~custody of the department may be ordered to receive involuntary~~
15 ~~medical treatment, including the taking or application of~~
16 ~~medication, if the court finds that:~~

17 ~~(1) The inmate or detainee poses a danger of physical harm~~
18 ~~to self or danger of physical harm to others;~~

19 ~~(2) Treatment with medication is medically appropriate;~~
20 and



1 ~~(3) Considering less intrusive alternatives, treatment is~~
2 ~~essential to forestall the danger posed by the inmate~~
3 ~~or detainee.]~~

4 A pretrial detainee or a committed person, in the custody of the
5 department, may be ordered to receive treatment over the
6 pretrial detainee's or committed person's objection, including
7 the taking or application of medication, if the court, or
8 administrative panel through the administrative authorization
9 process established pursuant to section 353- , finds that:

10 (1) The pretrial detainee or committed person suffers from
11 a physical or mental disease, disorder, or defect;

12 (2) The pretrial detainee or committed person is
13 imminently dangerous to self or others;

14 (3) The proposed treatment is medically appropriate; and

15 (4) After considering less intrusive alternatives,
16 treatment is necessary to forestall the danger posed
17 by the pretrial detainee or committed person.

18 (b) For the purposes of this section[+]

19 ~~"Danger of physical harm to others" means likely to cause~~
20 ~~substantial physical or emotional injury to another, as~~
21 ~~evidenced by an act, attempt, or threat occurring recently or~~



1 ~~through a pattern of past behavior that has resulted in the~~
2 ~~person being placed in a more restricted setting for the safety~~
3 ~~of others in the facility.~~

4 ~~"Danger of physical harm to self" means the person recently~~
5 ~~has threatened or attempted suicide or serious bodily self~~
6 ~~injury; or the person recently has behaved in such a manner as~~
7 ~~to indicate that the person is unable, without supervision and~~
8 ~~the assistance of others, to satisfy the need for nourishment,~~
9 ~~essential medical care, or self protection, so that it is~~
10 ~~probable that death, substantial bodily injury, or serious~~
11 ~~physical or mental debilitation or disease will result unless~~
12 ~~adequate treatment is provided.], "imminently dangerous to self~~
13 ~~or others" means that, without intervention, the person will~~
14 ~~likely become dangerous to self or dangerous to others within~~
15 ~~the next forty-five days."~~

16 SECTION 6. In codifying the new sections added by section
17 2 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect on July 1, 2050.



Report Title:

Psychiatric Treatment; Administrative Order; Administrative Authorization Process; Department of Health; Department of Public Safety

Description:

Authorizes psychiatric treatment by administrative order despite a patient's objection for patients admitted to the Hawaii State Hospital and pretrial detainees or committed persons in the custody of the Department of Public Safety. Establishes criteria for issuing court or administrative order and the process to determine whether administrative order should be issued for psychiatric treatment over the patient's objection. Effective 7/1/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

