

CHAPTER 334
MENTAL HEALTH, MENTAL ILLNESS, DRUG ADDICTION,
AND ALCOHOLISM

Part I. General and Administrative Provisions

Section

- 334-1 Definitions
- 334-2 Mental health system
- 334-2.5 Contracts for facilities and services
- 334-2.7 Development or expansion of a forensic facility of the department of health
- 334-3 Functions of department in mental health
- 334-3.5 Employment program for the chronically mentally ill established
- 334-4 Personnel for mental health program
- 334-5 Confidentiality of records
- 334-6 Fees; payment of expenses for treatment services
- 334-7 Donations or grants to department
- 334-8 Agreements
- 334-9 Rules
- 334-10 State council on mental health
- 334-11 Service area boards
- 334-12 Bilingual mental health services
- 334-13 Representative payee program
- 334-14 Group homes for substance abusers; source of funds; disposition of receipts
- 334-15 Mental health and substance abuse special fund; established
- 334-16 Annual report; forensic patient data

Part II. Operation of Psychiatric Facilities

- 334-21 Licensing of psychiatric facilities
- 334-22 Penalty
- 334-23 Money belonging to patients
- 334-24 Admission; discharge; civil liability

Part III. State Hospital--Repealed

- 334-31 to 38 Repealed

Part IV. Admission to Psychiatric Facility

- 334-51 to 58 Repealed
- 334-59 Emergency examination and hospitalization
- 334-60 Repealed
- 334-60.1 Voluntary admission for nonemergency treatment or supervision
- 334-60.2 Involuntary hospitalization criteria
- 334-60.3 Initiation of proceeding for involuntary

- hospitalization
- 334-60.4 Notice; waiver of notice; hearing on petition; waiver of hearing on petition for involuntary hospitalization
- 334-60.5 Hearing on petition
- 334-60.6 Period of detention
- 334-60.7 Notice of intent to discharge
 - 334-61 Presumption; civil rights
 - 334-62 Service of process and papers upon patients

Part V. Transfer, Leave, and Discharge

- 334-71 Transfer of patients between facilities
- 334-72 Transfer of veterans
- 334-73 Repealed
- 334-74 Transfer of residents of correctional facilities
- 334-75 Authorized absence
- 334-76 Discharge from custody

Part VI. Appeal and Review

- 334-81 Request for hearing
- 334-82 Order to show cause; guardian ad litem
- 334-83 Hearing
- 334-84 Order
- 334-85 Further hearings
- 334-86 Status of patient pending hearing

Part VII. Community Residential Treatment System

- 334-101 Establishment
- 334-102 Criteria
- 334-103 Program elements
- 334-104 Least restrictive level of service
- 334-105 Evaluation
- 334-106 License or accreditation required

Part VIII. Assisted Community Treatment

- 334-121 Criteria for assisted community treatment
- 334-122 Definitions
- 334-123 Initiation of proceeding for assisted community treatment
- 334-124 Hearing date
- 334-125 Notice
- 334-126 Hearing on petition
- 334-127 Disposition
- 334-128 Treatment costs and fees
- 334-129 Failure to comply with assisted community treatment
- 334-130 Period of assisted community treatment

- 334-131 Notice of intent to discharge
- 334-132 Objection to discharge
- 334-133 Petition for additional period of treatment; hearing
- 334-134 Hearing for discharge

Part IX. Civil Commitment for Substance Abuse
Outpatient Treatment

- 334-141 Definitions
- 334-142 Petition
- 334-143 Notice of hearing and service of petition on
respondent
- 334-144 Hearing and court order
- 334-145 Treatment costs, fees, and costs for petition
process
- 334-146 Discharge
- 334-147 Failure to comply with court order
- 334-148 Application

Note

Chapter heading amended by L 1983, c 140, §3.

Cross References

Drug dealer liability, see chapter 663E.
Drug demand reduction assessments, special fund; see §706-650.
Inspections of state-licensed care facilities; public notice, see §321-1.8.
Insurance benefits, see chapter 431M.

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCF rule 81(b)(7).

Law Journals and Reviews

Comments and Questions About Mental Health Law in Hawaii, David B. Wexler, 13 HBJ No. 4 Winter 1978, pg. 3.
Hawaii's Noncommitment to Civil Commitment: Out of Sight, Out of Mind, Out of Theory, Frederick Lee Hall III, 13 HBJ No. 4 Winter 1978, pg. 21.

"PART I. GENERAL AND ADMINISTRATIVE PROVISIONS

§334-1 Definitions. As used in this chapter unless otherwise indicated by the context:

"Administrator" means the person in charge of a public or private hospital.

"Admission procedures" mean the various methods for admission of mentally ill persons or of persons habituated to the excessive use of drugs or alcohol to public and private psychiatric facilities.

"Authorized absence" means absence of a patient from a psychiatric facility for any period of time with permission.

"Community mental health center" means one or more facilities which alone or in conjunction with other facilities, public or private, are part of a coordinated program providing a variety of mental health services principally for persons residing in a community or communities in or near which the center is located.

"Conservator" shall have the meaning provided in section 560:5-102.

"Court" means any duly constituted court and includes proceedings, hearings of per diem judges as authorized by law.

"Dangerous to others" means likely to do substantial physical or emotional injury on another, as evidenced by a recent act, attempt or threat.

"Dangerous to property" means inflicting, attempting or threatening imminently to inflict damage to any property in a manner which constitutes a crime, as evidenced by a recent act, attempt or threat.

"Dangerous to self" means the person recently has:

- (1) Threatened or attempted suicide or serious bodily harm; or
- (2) Behaved in such a manner as to indicate that the person is unable, without supervision and the assistance of others, to satisfy the need for nourishment, essential medical care, shelter or self-protection, so that it is probable that death, substantial bodily injury, or serious physical debilitation or disease will result unless adequate treatment is afforded.

"Department" means the department of health.

"Director" means the director of health.

"Discharge" means the formal termination on the records of a psychiatric facility of a patient's period of treatment at the facility.

"Gravely disabled". DELETED.

"Guardian" shall have the meaning provided in section 560:5-102.

"Health care operations" means the services and activities conducted by an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide medical or health services in the ordinary course of business, including case management and care coordination, quality assessment and improvement activities, medical reviews, and administrative activities.

"Health care provider" means an individual or entity licensed, certified, or otherwise authorized or permitted by law to provide medical or health services in the ordinary course of business or practice of a profession.

"Homeless individual" means an individual who is homeless as defined under section 346-361 and who has a serious and persistent mental illness or is otherwise eligible for treatment.

"Imminently dangerous to self or others" means that, without intervention, the person will likely become dangerous to self or dangerous to others within the next forty-five days.

"Incapacitated person" shall have the meaning provided in section 560:5-102.

"Interested person" means an interested, responsible adult, including but not limited to a public official, the legal guardian, spouse, parent, legal counsel, adult child, or next of kin of a person allegedly mentally ill, mentally deficient or suffering from substance abuse or as otherwise provided in article I of chapter 560.

"Intoxicated person" means a person who is deprived of reasonable self-control because of intake of alcohol or because of any substance which includes in its composition volatile organic solvents.

"Judge" means any judge of the family court or per diem judge appointed by the chief justice as provided in section 604-2.

"Law enforcement officer" has the same meaning as in section 710-1000.

"Licensed physician" means a physician or surgeon licensed by the State to practice medicine, including a physician and surgeon granted a limited and temporary license under section 453-3(1), (2), and (5) or a resident physician and surgeon granted a limited and temporary license under paragraph (4) thereof, or a medical officer of the United States while in this State in the performance of the medical officer's official duties.

"Mental health" means a state of social, psychological, and physical well-being, with capacity to function effectively in a variety of social roles.

"Mentally ill person" means a person having psychiatric disorder or other disease which substantially impairs the person's mental health and necessitates treatment or supervision.

"Obviously ill". DELETED.

"Patient" means a person under observation, care, or treatment at a psychiatric facility.

"Person suffering from substance abuse" means a person who uses narcotic, stimulant, depressant, or hallucinogenic drugs or alcohol to an extent which interferes with the person's personal, social, family, or economic life.

"Protected person" shall have the meaning provided in section 560:5-102.

"Psychiatric facility" means a public or private hospital or part thereof which provides inpatient or outpatient care, custody, diagnosis, treatment or rehabilitation services for mentally ill persons or for persons habituated to the excessive use of drugs or alcohol or for intoxicated persons.

"Special treatment facility" means a public or private facility which provides a therapeutic residential program for care, diagnosis, treatment or rehabilitation services for

emotionally distressed persons, mentally ill persons or persons suffering from substance abuse.

"Therapeutic living program" means a supervised living arrangement that provides mental health or substance abuse services for individuals or families who do not need the structure of a special treatment facility and are transitioning from a more restrictive treatment setting to independent living. The program aids residents in meeting basic needs and provides supportive services through a required service plan.

"Treatment" means the broad range of emergency, out-patient, intermediate, domiciliary, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, career counseling, and other special services which may be extended to handicapped persons.

"Treatment summary" means a record of information including present history and physical examination, mental status examination, emergency department record, intake evaluation, eligibility determination, current medication list and prescription history, treatment plan, consultant reports, diagnosis and problem lists, recent laboratory and diagnostic testing, clinical or discharge summaries, and discharge instructions, or any combination of such information.

"Unauthorized absence" means absence of a patient from a psychiatric facility for any period of time without permission. [L 1967, c 259, pt of §1; HRS §334-1; am L 1968, c 6, §2; am L 1969, c 153, §1; am L 1973, c 93, pt of §2; am L 1976, c 130, §1(1), (2); am L 1977, c 76, §1; am L 1979, c 228, §2; am L 1984, c 94, §1; am L 1985, c 75, §1; gen ch 1985; am L 1986, c 335, §1 and c 339, §43; am L 1997, c 220, §1; am L 2004, c 161, §7; am L 2008, c 98, §1; am L 2013, c 221, §§3, 24 and c 232, §1; am L 2016, c 114, §§1, 6 and c 186, §2]

Revision Note

The definition of "law enforcement officer" in this section reflects the language of the amendment by L 2013, c 232, §1, rather than that of the amendment by L 2013, c 221, §3. To see the definition of "law enforcement officer" by L 2013, c 221, see the 2013 Session Laws of Hawaii.

Law Journals and Reviews

For description of procedure under chapter, see Thou Shalt Not Commit, Samuel P. King, 5 HBJ 46.

Case Notes

In light of the definition of "dangerous to self" under this section, person's refusal to take medications and person's racist remarks to strangers constituted insufficient evidence to support family court's finding that person was imminently and substantially dangerous to person's self. 102 H. 528 (App.), 78 P.3d 341.

" **§334-2 Mental health system.** The department of health shall foster and coordinate a comprehensive mental health system utilizing public and private resources to reduce the incidence of mental or emotional disorders and substance abuse, to treat and rehabilitate the victims in the least restrictive and most therapeutic environment possible, and to provide treatment and care for homeless individuals with serious and persistent mental health challenges to enable them to reside in a permanent dwelling unit or homeless facility, as defined in section 346-361. The department shall administer such programs, services, and facilities as may be provided by the State to promote, protect, preserve, care for, and improve the mental health of the people. [L 1967, c 259, pt of §1; HRS §334-2; am L 1984, c 218, §2; am L 2016, c 186, §3]

" **§334-2.5 Contracts for facilities and services.** (a) The director may contract with any person for:

- (1) The development or operation of private in-state psychiatric facilities;
- (2) The placement of patients in existing private or public psychiatric facilities; and
- (3) The provision of:
 - (A) Secure psychiatric rehabilitation services;
 - (B) Crisis intervention and stabilization services;
 - (C) Intensive treatment and wraparound services;
 - (D) Diversion services;
 - (E) Special treatment facilities or therapeutic living programs as defined in section 334-1;
 - (F) Case management services;
 - (G) Housing services;
 - (H) Outreach services, with priority for outreach services intended to help homeless individuals with serious and persistent mental health challenges reside in homeless facilities, permanent dwelling units, or other facilities and avoid returning to homelessness; and
 - (I) Other mental health treatment and rehabilitation services.

(b) The department may operate or contract for a secure psychiatric rehabilitation program for individuals who require intensive therapeutic treatment and rehabilitation in a secure setting. The services authorized by this section shall be for persons:

- (1) Involuntarily hospitalized under this chapter for whom the services cannot be reimbursed, covered, or provided by an insurer, plan, or other person;
- (2) Committed to the custody of the director under chapter 704; and
- (3) Appropriately hospitalized under chapter 704 or 706.

The director shall be responsible for the appropriate placement of all persons placed in facilities or services contracted for or operated by the director under paragraphs (1) through (3).

Any such person placed in a facility or services contracted for or operated by the director who leaves or remains away from the facility or services, without permission, may be apprehended and returned to the facility or services by any employee of the department or by any law enforcement officer without any warrant or further proceeding.

(c) The department shall:

- (1) See that patients who receive services under contract or provided directly by the department pursuant to subsection (a) receive the care and treatment for which the department has contracted or for which appropriate services are provided directly by the department;
- (2) Make periodic reviews of the records of each person committed to the director's custody or hospitalized pursuant to this chapter, chapter 704, or chapter 706;
- (3) In suitable cases, discharge or place on authorized absence persons committed to the director's custody or hospitalized pursuant to this chapter, chapter 704, or chapter 706; and
- (4) Keep a medical record of each person committed to the director's custody or hospitalized pursuant to this chapter, chapter 704, or chapter 706. [L 1999, c 119, §2; am L 2013, c 232, §2; am L 2016, c 186, §4]

" **[§334-2.7] Development or expansion of a forensic facility of the department of health.** (a) Notwithstanding any other law to the contrary, the governor, with the assistance of the director, may negotiate with any person for the development or expansion of a forensic facility of the department; provided that if an environmental assessment or environmental impact statement is required for a proposed site or for the expansion

of the forensic facility under section 343-5, then notwithstanding the time periods specified for public review and comments under section 343-5, the governor shall accept public comments for a period of sixty days following public notification of either an environmental assessment or an environmental impact statement.

(b) Any development or expansion proposal shall address the construction of the forensic facility separate from the operation of the facility and shall consider and include:

- (1) The percentages of low, medium, and high risk patients;
- (2) The impact of the facility on existing infrastructure and an assessment of improvements and additions that will be necessary;
- (3) The impact of the facility on available modes of transportation, including airports, roads, and highways; and
- (4) A useful life costs analysis.

(c) For the purposes of this section:

"Forensic facility" means a facility that assesses and treats forensically committed persons.

"Useful life costs" means an economic evaluation that compares alternate building and operating methods and provides information on the design, construction methods, and materials to be used with respect to efficiency in building maintenance and facility operation. [L 2016, c 90, §2]

" **§334-3 Functions of department in mental health.** (a) The department of health within the limits of available funds within the designated programs, shall promote and provide for the establishment and operation of a community-based mental health system responsive to the needs of persons of all ages, ethnic groups, and geographical areas of the State, reflective of an appropriate distribution of resources and services, and monitored and evaluated in terms of standards, goal attainment, and outcomes. The elements of the system shall be defined by departmental rules recognizing the need for at least the following services:

- (1) Informational and educational services to the general public and to lay and professional groups;
- (2) Collaborative and cooperative services with public and private agencies and groups for the prevention and treatment of mental or emotional disorders and substance abuse and rehabilitation of patients;
- (3) Consultation services to the judiciary, to educational institutions, and to health and welfare agencies;
- (4) Case management, outreach, and follow-up services;

- (5) Emergency crisis and noncrisis intervention services accessible to all residents;
- (6) Community-based, relevant, and responsive outpatient services;
- (7) Community residential care comprising a comprehensive range of small, homelike, and appropriately staffed treatment and rehabilitation facilities;
- (8) Short-term psychiatric treatment, preferably in facilities where access to other health and medical services are readily available;
- (9) Intensive psychiatric treatment for patients in need of long-term, highly structured, or highly specialized care and treatment under section 334-2.5, and provision of appropriate community resources;
- (10) Training programs, activities, and staffing standards for the major mental health disciplines and ancillary services; and
- (11) Rehabilitative services for hospital and community-based individuals who have experienced short- or long-term mental or emotional disorders and substance abuse.

(b) The department shall revise, refine, and develop the system to ensure optimal responsiveness to the many and varied needs of the people of the State. The development of the system shall be based on an annual statewide comprehensive integrated service plan that is the cumulative result of comprehensive integrated service area planning within each county. The statewide plan shall determine the specific content of the department of health budget for the mental health system.

(c) The department shall specifically:

- (1) Perform statewide assessments of the need for prevention, treatment, and rehabilitation services in the areas of mental or emotional disorders and substance abuse;
- (2) Adopt rules pursuant to chapter 91 for establishing the number and boundaries of the geographical service areas for the delivery of services in the areas of mental or emotional disorders and substance abuse. The department shall periodically review the effectiveness of the geographical service areas in promoting accessibility and continuity of appropriate care to all residents of that geographical area;
- (3) Appoint a service area administrator in each county who shall be responsible for the development, delivery, and coordination of services in that area;
- (4) Ensure statewide and community-based planning for the ongoing development and coordination of the service

delivery system as guided by needs assessment data and performance related information;

- (5) Establish standards and rules for psychiatric facilities and their licensing, where applicable;
- (6) Establish standards and rules for services in the areas of mental health and substance abuse treatment, including assurances of the provision of minimum levels of accessible service to persons of all ages, ethnic groups, and geographical areas in the State;
- (7) Ensure community involvement in determining the service delivery arrangements appropriate to each community of the State;
- (8) Cooperate with public and private health, education, and human service groups, agencies, and institutions in establishing a coordinated system to meet the needs of persons with mental or emotional disorders and substance abuse difficulties;
- (9) Evaluate and monitor all services in the fields of mental health and substance abuse where such services are supported fully or in part by state resources;
- (10) Promote and conduct research, demonstration projects, and studies concerned with the nature, prevention, intervention, and consequences of mental or emotional disorders and substance abuse;
- (11) Keep records, statistical data, and other information as may be necessary in carrying out the functions of the mental health system and this chapter;
- (12) Advocate patients' rights in all psychiatric facilities in the State and investigate any grievances submitted to the department by any patient in a psychiatric facility, except as provided in section 334E-2(d). The department shall establish rules and procedures for the purpose of this paragraph within one year after January 1, 1985, and post the rules in a conspicuous manner and accessible place;
- (13) Promote and conduct a systematic program of accountability for all services provided, funds expended, and activities carried out under its direction or support in accordance with sound business, management, and scientific principles;
- (14) Coordinate mental health resources in each county of the State by the development and presentation of a comprehensive integrated service area plan developed by the service area administrator in conjunction with the service area board. The service area administrator and the service area board, in collaboration with private and public agencies serving

their population, shall submit recommendations for the statewide comprehensive integrated service plan, including needs assessment, program planning, resource development, priorities for funding, monitoring, and accountability activities;

- (15) Oversee and coordinate service area programs and provide necessary administrative and technical assistance to assist service area programs in meeting their program objectives; and
- (16) Provide staffing to the state council and service area boards to assist in the performance of their functions. [L 1967, c 259, pt of §1; HRS §334-3; am L 1982, c 200, §2; am L 1984, c 218, §3; am L 1985, c 6, §2; am L 1999, c 119, §3; am L 2004, c 79, §2]

" **§334-3.5 Employment program for the chronically mentally ill established.** There is established within the mental health division of the department of health a community-based employment program for the chronically mentally ill to (1) create business enterprises for employment of the chronically mentally ill; (2) teach the skills and attitudes which will enable the chronically mentally ill to become employed; and (3) provide support services including housing so that the chronically mentally ill can secure and maintain employment and live within the community. [L 1987, c 340, §2]

" **§334-4 Personnel for mental health program.** The director shall appoint professional and nonprofessional staff as the director deems necessary to carry out the state mental health program and for which appropriations are available. Positions for psychiatrists are exempted from chapter 76. The director may employ psychiatrists as needed by the department on a contractual basis, subject to the approval of the governor. The director may appoint an administrator, three associate administrators, a director of psychosocial rehabilitation, a chief of the department of nursing, a risk manager, a patients' rights advisor, and a facilities plant engineer for the state hospital or a secure psychiatric rehabilitation facility established pursuant to this chapter and these positions shall be exempt from chapter 76. [L 1967, c 259, pt of §1; HRS §334-4; gen ch 1985; am L 1996, c 125, §2; am L 1998, c 97, §1; am L 1999, c 119, §4; am L 2000, c 253, §150]

" **§334-5 Confidentiality of records.** All certificates, applications, records, and reports made for the purposes of this chapter that are maintained, used, or disclosed by health care providers as defined in this chapter, health plans as defined in

title 45 Code of Federal Regulations section 160.103, and health care clearinghouses as defined in title 45 Code of Federal Regulations section 160.103, and directly or indirectly identifying a person subject hereto shall be kept confidential and shall not be disclosed by any person except as allowed by title 45 Code of Federal Regulations part 164, subpart E. Nothing in this section shall preclude the:

- (1) Application of more restrictive rules of confidentiality set forth for records covered by title 42 Code of Federal Regulations part 2, relating to the confidentiality of alcohol and drug abuse patient records;
- (2) Disclosure deemed necessary under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, P.L. 99-319, to protect and advocate for the rights of persons with mental illness who reside in facilities providing treatment or care; or
- (3) Disclosures made by a court or the Hawaii criminal justice data center of orders of involuntary civil commitment issued pursuant to section 334-60.5 for the purpose of firearms permitting or registration pursuant to chapter 134. [L 1967, c 259, pt of §1; HRS §334-5; am L 1973, c 122, §1; gen ch 1985; am L 1987, c 148, §1; am L 1999, c 87, §3; am L Sp 2000 2d, c 1, §1; am L 2001, c 244, §§3, 6; am L 2003, c 204, §8; am L 2004, c 22, §1; am L 2008, c 98, §2; am L 2014, c 87, §3 and c 214, §4]

" **§334-6 Fees; payment of expenses for treatment services.**

(a) Pursuant to chapter 91, the director shall establish reasonable charges for treatment services and may make collections on such charges. In making the collections on such charges the director shall take into consideration the financial circumstances of the patient and the patient's family including a reciprocal beneficiary, and no collections shall be made where in the judgment of the director, such collections would tend to make the patient or the patient's family including a reciprocal beneficiary, a public charge or deprive the patient and the patient's family including a reciprocal beneficiary, of necessary support.

(b) Every person hospitalized at a psychiatric facility or receiving treatment services through a community mental health center under the jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its revenues from the general fund of the State, or pursuant to contract with the director under section 334-2.5, shall be liable for the expenses

attending their reception, maintenance, and treatment and any property not exempt from execution belonging to the person shall be subject to sequestration for the payment of the expenses. Every parent or legal guardian of a patient who is a minor and every spouse or reciprocal beneficiary of a patient shall be liable for the expenses attending the reception, maintenance, and treatment of that minor child or spouse or reciprocal beneficiary who is hospitalized at a psychiatric facility or receiving treatment through a community mental health center under the jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its revenues from the general fund of the State, or pursuant to contract with the director under section 334-2.5. [L 1967, c 259, pt of §1; HRS §334-6; am L 1971, c 153, §1; am L 1972, c 80, §1; am L 1991, c 243, §2; gen ch 1992; am L 1997, c 383, §44; am L 1999, c 119, §5]

" **§334-7 Donations or grants to department.** The department of health is authorized to accept donations or grants from individuals and other agencies, public and private, to further the purposes of the mental health program. The donations or grants shall in fact be used for the mental health program and for the intended purpose, if specified. [L 1967, c 259, pt of §1; HRS §334-7]

" **§334-8 Agreements.** In carrying out the director's duties under this chapter:

- (1) The director of health may enter into agreements with the United States and with other state departments, agencies, and political subdivisions and enter into assistance agreements for services with a profit organization incorporated under the laws of the State or a nonprofit organization determined to be exempt from the federal income tax by the Internal Revenue Service and allocate and expend any funds appropriated for the purposes of such agreements and do all things necessary to accomplish the purposes and provisions thereof.
- (2) The director shall establish standards and review procedures to assure that recipients of state funding provide the services and facilities necessary to accomplish the purposes for which the funds are provided. [L 1967, c 259, pt of §1; HRS §334-8; am L 1984, c 78, §1 and c 218, §4; gen ch 1985]

" **§334-9 Rules.** The director of health shall adopt rules in accordance with chapter 91 to carry out this chapter. [L 1967, c 259, pt of §1; HRS §334-9; am L 1984, c 218, §5]

" **§334-10 State council on mental health.** (a) There is established a state council on mental health. The council shall consist of twenty-one members appointed by the governor as provided in section 26-34. In making appointments to the council, the governor shall ensure that all service area boards of the State are represented, and that a majority of the members are nonproviders of mental health or other health services, and that a majority of the members are not state employees. The number of parents of children with serious emotional disturbances shall be sufficient to provide adequate representation of such children in the deliberations of the council. The council shall be composed of residents of the State, including individuals representing:

- (1) The principal state agencies with respect to mental health, education, vocational rehabilitation, criminal justice, housing, and social services;
- (2) Public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;
- (3) Adults with serious mental illnesses who are receiving, or have received, mental health services;
- (4) The families of such adults or families of children with serious emotional disturbances; and
- (5) The Hawaii advisory commission on drug abuse and controlled substances who shall be a person knowledgeable about the community and the relationships between mental health, mental illness, and substance abuse.

(b) The council shall elect a chairperson from among its members. All members shall serve without compensation but shall be paid their necessary expenses in attending meetings of the council.

(c) The council shall advise the department on allocation of resources, statewide needs, and programs affecting two or more service areas. The council shall review and comment on the statewide comprehensive integrated service plan and shall serve as an advocate for adults with serious mental illness, children with serious emotional disturbances, other individuals with mental illnesses or emotional problems, and individuals with combined mental illness substance abuse disorders.

(d) If the department's action is not in conformance with the council's advice, the department shall provide a written explanation of its position to the council.

(e) The council shall prepare and submit an annual report to the governor and the legislature on implementation of the statewide comprehensive integrated service plan. The report presented to the legislature shall be submitted at least twenty days prior to the convening of each regular session. [L 1984, c 218, pt of §1; am L 1993, c 210, §2; am L 2004, c 79, §3]

" **§334-11 Service area boards.** (a) A service area board shall be established to advise each service area administrator. Each board shall consist of nine members appointed by the governor, who shall serve for terms to be determined by the governor. After the initial appointees, the governor shall fill each vacancy on a board by appointing a member from a list of four persons submitted by that board, except that, if the board is unable to achieve a quorum at two consecutive meetings called for the purpose of making such a list, the list may be provided by a group of at least seven service area consumers and nonproviders of mental health services. This group shall consist of all board members willing to participate in making the list and other area consumers and nonproviders of mental health services to be selected by the service area board chairperson and service area administrator. Any meeting called for the purpose of making the list shall be subject to part I of chapter 92. The members of the board shall be service area residents, who are consumers or nonproviders of mental health services and service area providers with a majority being non-state employees and nonproviders of mental health or other health services.

Each board shall elect a chairperson from among its members. All members shall serve without compensation but shall be paid their necessary expenses in attending meetings of the board.

(b) Each service area administrator and board, in consultation with public and private providers, shall participate in the development of comprehensive integrated service area plans and budgets. Each board shall advise the service area administrator about service area needs to prevent and treat mental or emotional disorders, combined mental illness substance abuse disorders, and persons afflicted by these disorders, and provide advice, guidance, and recommendations to both the advisory commission on drug abuse and controlled substances, section 329-2, and the state council on mental health, section 334-10, as they deem appropriate.

(c) If a service area administrator's actions are not in conformance with the board's planning decisions, the service area administrator shall provide a written explanation to the

board. [L 1984, c 218, pt of §1; am L 1985, c 6, §1; am L 1987, c 14, §1; am L 1993, c 210, §3; am L 2004, c 79, §4]

" **[§334-12] Bilingual mental health services.** (a) There is established in the mental health division of the department of health, a mental health unit which shall provide bilingual mental health services statewide.

(b) The mental health unit established in this section shall have the following functions and shall provide the following services:

- (1) Outreach;
- (2) Education;
- (3) Case finding;
- (4) Screening;
- (5) Referral and linkage;
- (6) Consultation;
- (7) Crisis stabilization;
- (8) Community support services;
- (9) System advocacy;
- (10) Client support and advocacy; and
- (11) Monitoring and follow-up. [L 1989, c 78, §3]

" **§334-13 Representative payee program.** (a) There is established a representative payee program within the department of health, to be administered by the director of health, to provide representative payee services to "mentally ill persons", "persons suffering from substance abuse", and persons referred from the department of human services who receive financial assistance and have a primary medical diagnosis of substance abuse.

(b) In developing this program, the department of health shall consider the following:

- (1) Services to the neighbor islands;
- (2) Training for representative payees;
- (3) Representative payees for care home residents;
- (4) Representative payees for homeless persons;
- (5) The use of case managers as representative payees;
- (6) The development of due process procedures to protect the rights of mentally ill persons and persons suffering from substance abuse; and
- (7) The development and implementation of an inter-agency working agreement with the department of human services to carry out the purposes of this program. [L 1990, c 169, §2; am L 1995, c 207, §3]

" **§334-14 Group homes for substance abusers; source of funds; disposition of receipts.** (a) All moneys to make loans

for the establishment of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than four individuals, shall be allocated by the legislature through appropriations out of the state general fund.

(b) The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

(c) All moneys received from other funding sources, including but not limited to federal sources, or in repayment of loan principal, payment of interest, or fees, under this section shall be deposited to the credit of the state general fund. [L 1990, c 177, §2; am L 1993, c 280, §36]

" **§334-15 Mental health and substance abuse special fund; established.** (a) There is established a special fund to be known as the mental health and substance abuse special fund into which shall be deposited all revenues and other moneys collected from certification programs and treatment services rendered by the mental health and substance abuse programs operated by the State. Notwithstanding any other law to the contrary, the department is authorized to establish separate accounts within the special fund for depositing moneys received from certification programs and from each mental health and substance abuse program. Moneys deposited into the respective accounts of each program shall be used for the payment of the operating expenses of the respective program.

(b) The director shall submit a report to the legislature, not later than twenty days prior to the convening of each regular session, which identifies for each account in the special fund, the account balance and ceiling increase, any transfers and expenditures made, and the purposes of the expenditures. [L 1991, c 243, §1; am L 1995, c 214, §2]

" **[§334-16] Annual report; forensic patient data.** The department of health shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session which, at a minimum, shall summarize yearly data on forensic patients, including:

- (1) Gross numbers for admissions to and discharges from the Hawaii state hospital;
- (2) The number of admissions to, discharges from, and lengths of stays in the Hawaii state hospital, broken down by the following commitment categories:
 - (A) Original order under section 704-411(1)(a);
 - (B) Pending examination under section 704-411(3);
 - (C) Maximum seventy-two-hour recommitment pending examination under section 704-413(1);

- (D) Original order under section 704-404; and
- (E) Original order under section 704-406;
- (3) Number of persons committed to the Hawaii state hospital by each court and county;
- (4) Gross lengths of stay in the Hawaii state hospital for:
 - (A) Patients discharged during the fiscal year; and
 - (B) Individuals remaining as inpatients at the end of the fiscal year; and
- (5) Number of patients in the Hawaii state hospital on forensic status, broken down by categories of underlying crimes, such as by crimes against the person, sex offenses, and property crimes, and by grade of offense. [L 2008, c 100, §2]

"PART II. OPERATION OF PSYCHIATRIC FACILITIES

§334-21 Licensing of psychiatric facilities. No person, association, corporation, or government agency shall establish, maintain, or operate a psychiatric facility to which persons are involuntarily admitted without first obtaining a license therefor from the department of health. The license may be for a definite period and shall be subject to revocation as hereinafter provided. The issuance of a license shall be based upon an application which shall be in such form and shall contain such information as the department may require. The facility must be able to provide adequate care and treatment in conformance with standards established by the department. The department may, at any and all times, examine and ascertain whether a licensed facility is being conducted in compliance with the license and applicable rules and regulations. Subject to chapter 91, the department may, if the interests of the public or of the patients of a facility so demand, for just and reasonable cause then appearing and to be stated in its order, amend or revoke a license by an order to take effect within such time as the department shall determine. This section shall not apply to any facility operated by the United States or any agency thereof. [L 1967, c 259, pt of §1; HRS §334-21; am L 1968, c 6, §3; am L 1977, c 76, §2]

Cross References

For admission to a psychiatric facility, see part IV.

" **§334-22 Penalty.** Any person who and any association or corporation which establishes, maintains, or operates a psychiatric facility for compensation or hire without holding a

valid license issued under this part, and any officer of any association or corporation who participates in the violation, shall be fined not more than \$1,000 or, in the case of an individual, imprisoned not more than six months, or both. [L 1967, c 259, pt of §1; HRS §334-22]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§334-23 Money belonging to patients.** Whenever small amounts of cash come into the hands of the administrator of a psychiatric facility, the administrator may, without seeking the appointment of a guardian, deposit the money in a bank or other financial institution and from time to time as the administrator may determine apply the same or any part thereof for the benefit of the patient, provided that so long as a guardian is not appointed, the administrator shall not apply any part of the cash for the maintenance of the patient in the facility. [L 1967, c 259, pt of §1; HRS §334-23; gen ch 1985]

" **§334-24 Admission; discharge; civil liability.** No person shall be admitted to, detained at, or discharged from any psychiatric facility except as provided in this chapter and in chapters 571, 704 and 706. [L 1967, c 259, pt of §1; HRS §334-24; am L 1976, c 130, §2]

"PART III. STATE HOSPITAL--REPEALED

§§334-31 to 38 REPEALED. L 1999, c 119, §8.

"PART IV. ADMISSION TO PSYCHIATRIC FACILITY

Law Journals and Reviews

Risky Business: Assessing Dangerousness in Hawai'i. 24 UH L. Rev. 63.

§§334-51 to 58 [OLD] REPEALED. L 1976, c 130, pt of §4.

" **§334-59 Emergency examination and hospitalization.** (a) Initiation of proceedings. An emergency admission may be initiated as follows:

- (1) If a law enforcement officer has reason to believe that a person is imminently dangerous to self or others, the officer shall call for assistance from the

mental health emergency workers designated by the director. Upon determination by the mental health emergency workers that the person is imminently dangerous to self or others, the person shall be transported by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization. A law enforcement officer may also take into custody and transport to any facility designated by the director any person threatening or attempting suicide. The officer shall make application for the examination, observation, and diagnosis of the person in custody. The application shall state or shall be accompanied by a statement of the circumstances under which the person was taken into custody and the reasons therefor which shall be transmitted with the person to a physician, advanced practice registered nurse, or psychologist at the facility.

- (2) Upon written or oral application of any licensed physician, advanced practice registered nurse, psychologist, attorney, member of the clergy, health or social service professional, or any state or county employee in the course of employment, a judge may issue an ex parte order orally, but shall reduce the order to writing by the close of the next court day following the application, stating that there is probable cause to believe the person is mentally ill or suffering from substance abuse, is imminently dangerous to self or others and in need of care or treatment, or both, giving the findings upon which the conclusion is based. The order shall direct that a law enforcement officer or other suitable individual take the person into custody and deliver the person to a designated mental health program, if subject to an assisted community treatment order issued pursuant to part VIII of this chapter, or to the nearest facility designated by the director for emergency examination and treatment, or both. The ex parte order shall be made a part of the patient's clinical record. If the application is oral, the person making the application shall reduce the application to writing and shall submit the same by noon of the next court day to the judge who issued the oral ex parte order. The written application shall be executed subject to the penalties of perjury but need not be sworn to before a notary public.

(3) Any licensed physician, advanced practice registered nurse, physician assistant, or psychologist who has examined a person and has reason to believe the person is:

(A) Mentally ill or suffering from substance abuse;

(B) Imminently dangerous to self or others; and

(C) In need of care or treatment;

may direct transportation, by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization. A licensed physician, an advanced practice registered nurse, or physician assistant may administer treatment as is medically necessary, for the person's safe transportation. A licensed psychologist may administer treatment as is psychologically necessary.

(b) Emergency examination. A patient who is delivered for emergency examination and treatment to a facility designated by the director shall be examined by a licensed physician or advanced practice registered nurse without unnecessary delay, and may be given such treatment as is indicated by good medical practice. A psychiatrist, advanced practice registered nurse, or psychologist may further examine the patient to diagnose the presence or absence of a mental disorder, assess the risk that the patient may be dangerous to self or others, and assess whether or not the patient needs to be hospitalized.

(c) Release from emergency examination. If the physician or advanced practice registered nurse who performs the emergency examination, in consultation with a psychologist if applicable, concludes that the patient need not be hospitalized, the patient shall be discharged immediately unless the patient is under criminal charges, in which case the patient shall be returned to the custody of a law enforcement officer.

(d) Emergency hospitalization. If the physician, advanced practice registered nurse, or psychologist who performs the emergency examination has reason to believe that the patient is:

(1) Mentally ill or suffering from substance abuse;

(2) Imminently dangerous to self or others; and

(3) In need of care or treatment, or both;

the physician, advanced practice registered nurse, or psychologist may direct that the patient be hospitalized on an emergency basis or cause the patient to be transferred to another psychiatric facility for emergency hospitalization, or both. The patient shall have the right immediately upon admission to telephone the patient's guardian or a family member including a reciprocal beneficiary, or an adult friend and an attorney. If the patient declines to exercise that right, the

staff of the facility shall inform the adult patient of the right to waive notification to the family including a reciprocal beneficiary, and shall make reasonable efforts to ensure that the patient's guardian or family including a reciprocal beneficiary, is notified of the emergency admission but the patient's family including a reciprocal beneficiary, need not be notified if the patient is an adult and requests that there be no notification. The patient shall be allowed to confer with an attorney in private.

(e) Release from emergency hospitalization. If at any time during the period of emergency hospitalization the responsible physician concludes that the patient no longer meets the criteria for emergency hospitalization the physician shall discharge the patient. If the patient is under criminal charges, the patient shall be returned to the custody of a law enforcement officer. In any event, the patient must be released within forty-eight hours of the patient's admission, unless the patient voluntarily agrees to further hospitalization, or a proceeding for court-ordered evaluation or hospitalization, or both, is initiated as provided in section 334-60.3. If that time expires on a Saturday, Sunday, or holiday, the time for initiation is extended to the close of the next court day. Upon initiation of the proceedings the facility shall be authorized to detain the patient until further order of the court. [L 1976, c 130, pt of §4; am L 1977, c 76, pt of §3; am L 1984, c 188, §1; am L 1985, c 68, §6; am L 1986, c 335, §§2, 3; am L 1992, c 138, §1; gen ch 1993; am L 1994, c 58, §1; am L 1997, c 383, §45; am L 2009, c 151, §15; am L 2013, c 221, §§4, 24 and c 232, §3; am L 2015, c 27, §2; am L 2016, c 55, §51, c 114, §§2, 6, and c 183, §3]

Case Notes

Several provisions of section held to violate Fourteenth Amendment due process rights. 438 F. Supp. 1106.

" **§334-60 REPEALED.** L 1984, c 188, §2.

" **[§334-60.1] Voluntary admission for nonemergency treatment or supervision.** (a) Acceptance for voluntary inpatient treatment at a psychiatric facility shall be in accordance with usual standards for hospital admissions.

(b) A facility may admit for evaluation, diagnosis, or treatment any individual under fifteen years of age for whom application is made by the individual's parent or guardian. If application for admission is countersigned by a minor aged fifteen through seventeen years before a family court officer,

no hearing shall be necessary. If the minor elects not to sign, involuntary hospitalization proceedings shall be initiated.

(c) A facility shall discharge a voluntary patient who has sufficiently improved so that hospitalization is no longer desirable. A voluntary patient or the patient's guardian, representative, or attorney may request discharge in writing at any time following admission to the facility. If discharge would be dangerous to the patient or others, proceedings for involuntary hospitalization must be initiated as soon as possible but within twenty-four hours of the receipt by the administrator of the written request for discharge. If that time expires on a Saturday, Sunday, or holiday, the time for initiation is extended to the close of the next court day. Upon the initiation of the proceedings, the facility is authorized to detain the patient until further order of the court. If the patient was admitted on the patient's own application and the request for discharge is made by a person other than the patient, the discharge may be conditioned upon the agreement of the patient.

(d) Notice of right to release. At the time of the patient's admission and each six months thereafter, a voluntary patient and the patient's guardian or representatives shall be notified in writing of the patient's right and how to apply for a discharge. [L 1984, c 188, pt of §3; gen ch 1985]

" **§334-60.2 Involuntary hospitalization criteria.** A person may be committed to a psychiatric facility for involuntary hospitalization, if the court finds:

- (1) That the person is mentally ill or suffering from substance abuse;
- (2) That the person is imminently dangerous to self or others; and
- (3) That the person is in need of care or treatment, or both, and there is no suitable alternative available through existing facilities and programs which would be less restrictive than hospitalization. [L 1984, c 188, pt of §3; am L 1985, c 75, §2; am L 1986, c 335, §4; am L 2013, c 221, §§5, 24; am L 2016, c 114, §6]

Cross References

Intermediate sanctions for selected offenders and defendants, see §§353-10.5, 353-63.5, and 706-605.1.

Law Journals and Reviews

Case Notes

In light of the definition of "dangerous to self" under §334-1, person's refusal to take medications and person's racist remarks to strangers constituted insufficient evidence to support family court's finding that person was imminently and substantially dangerous to person's self. 102 H. 528 (App.), 78 P.3d 341.

" **§334-60.3 Initiation of proceeding for involuntary hospitalization.** (a) Any person may file a petition alleging that a person located in the county meets the criteria for commitment to a psychiatric facility. The petition shall be executed subject to the penalties of perjury but need not be sworn to before a notary public. The attorney general, the attorney general's deputy, special deputy, or appointee designated to present the case shall assist the petitioner to state the substance of the petition in plain and simple language. The petition may be accompanied by a certificate of the licensed physician, advanced practice registered nurse, or psychologist who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to medical or psychological examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the signs and symptoms relied upon by the physician, advanced practice registered nurse, or psychologist to determine the person is in need of care or treatment, or both, and whether or not the person is capable of realizing and making a rational decision with respect to the person's need for treatment. If the petitioner believes that further evaluation is necessary before commitment, the petitioner may request such further evaluation.

(b) In the event the subject of the petition has been given an examination, evaluation, or treatment in a psychiatric facility within five days before submission of the petition, and hospitalization is recommended by the staff of the facility, the petition may be accompanied by the administrator's certificate in lieu of a physician's or psychologist's certificate. [L 1984, c 188, pt of §3; gen ch 1985; am L 1994, c 58, §2; am L 2015, c 27, §3]

" **§334-60.4 Notice; waiver of notice; hearing on petition; waiver of hearing on petition for involuntary hospitalization.**

(a) The court shall set a hearing on the petition and notice of

the time and place of such hearing shall be served in accordance with, and to those persons specified in, a current order of commitment. If there is no current order of commitment, notice of the hearing shall be served personally on the subject of the petition and served personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, on the subject's spouse or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed. If the subject of the petition has no living spouse or reciprocal beneficiary, legal parent and adult children, or if none can be found, notice of the hearing shall be served on at least one of the subject's closest adult relatives if any can be found. Notice of the hearing shall also be served on the public defender, attorney for the subject of the petition, or other court-appointed attorney as the case may be. If the subject of the petition is a minor, notice of the hearing shall also be served upon the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition if such person can be found within the State. Notice shall also be given to such other persons as the court may designate.

- (b) The notice shall include the following:
 - (1) The date, time, place of hearing, a clear statement of the purpose of the proceedings and of possible consequences to the subject; and a statement of the legal standard upon which commitment is authorized;
 - (2) A copy of the petition;
 - (3) A written notice, in plain and simple language, that the subject may waive such a hearing by voluntarily agreeing to hospitalization, or with the approval of the court, to some other form of treatment;
 - (4) A filled-out form indicating such waiver;
 - (5) A written notice, in plain and simple language, that the subject or the subject's guardian or representative may apply at any time for a hearing on the issue of the subject's need for hospitalization, if the subject has previously waived such a hearing;
 - (6) Notice that the subject is entitled to the assistance of an attorney and that the public defender has been notified of these proceedings;
 - (7) Notice that if the subject does not want to be represented by the public defender the subject may contact the subject's own attorney;
 - (8) Notice, if such be the case, that the petitioner intends to adduce evidence to show that the subject of the petition is an incapacitated or protected person, or both, under article V of chapter 560, and whether

or not appointment of a guardian is sought at the hearing. If appointment of a guardian is to be recommended, and a nominee is known at the time the petition is filed, the identity of the nominee shall be disclosed.

(c) If the subject executes and files a waiver of the hearing, upon acceptance by the court following a court determination that the person understands the person's rights and is competent to waive them, the court shall order the subject to be committed to a facility that has agreed to admit the subject as an involuntary patient or, if the subject is at such a facility, that the subject be retained there. [L 1984, c 188, pt of §3; gen ch 1985; am L 1997, c 383, §46; am L 2004, c 161, §36]

" **§334-60.5 Hearing on petition.** (a) The court may adjourn or continue a hearing for failure to timely notify a spouse or reciprocal beneficiary, guardian, relative, or other person determined by the court to be entitled to notice, or for failure by the subject to contact an attorney as provided in section 334-60.4(b)(7) if the court determines the interests of justice so require.

(b) The time and form of the procedure incident to hearing the issues in the petition shall be provided by court rule. Unless the hearing is waived, the judge shall hear the petition as soon as possible and no later than ten days after the date the petition is filed unless a reasonable delay is sought for good cause shown by the subject of the petition, the subject's attorney, or those persons entitled to receive notice of the hearing under section 334-60.4.

(c) The subject of the petition shall be present at all hearings unless the subject waives the right to be present, is unable to attend, or creates conditions which make it impossible to conduct the hearing in a reasonable manner as determined by the judge. A waiver is valid only upon acceptance by the court following a judicial determination that the subject understands the subject's rights and is competent to waive them, or is unable to participate. If the subject is unable to participate, the judge shall appoint a guardian ad litem or a temporary guardian as provided in article V of chapter 560, to represent the subject throughout the proceedings.

(d) Hearings may be held at any convenient place within the circuit. The subject of the petition, any interested party, or the court on its own motion may request a hearing in another circuit because of convenience to the parties, witnesses, or the court or because of the individual's mental or physical condition.

(e) The attorney general, the attorney general's deputy, special deputy, or appointee shall present the case for hearings convened under this chapter, except that the attorney general, the attorney general's deputy, special deputy, or appointee need not participate in or be present at a hearing whenever a petitioner or some other appropriate person has retained private counsel who will be present in court and will present to the court the case for involuntary hospitalization.

(f) Counsel for the subject of the petition shall be allowed adequate time for investigation of the matters at issue and for preparation, and shall be permitted to present the evidence that the counsel believes necessary to a proper disposition of the proceedings, including evidence as to alternatives to inpatient hospitalization.

(g) No individual may be found to require treatment in a psychiatric facility unless at least one physician, advanced practice registered nurse, or psychologist who has personally examined the individual testifies in person at the hearing. This testimony may be waived by the subject of the petition. If the subject of the petition has refused to be examined by a licensed physician, advanced practice registered nurse, or psychologist, the subject may be examined by a court-appointed licensed physician, advanced practice registered nurse, or psychologist. If the subject refuses and there is sufficient evidence to believe that the allegations of the petition are true, the court may make a temporary order committing the subject to a psychiatric facility for a period of not more than five days for the purpose of a diagnostic examination and evaluation. The subject's refusal shall be treated as a denial that the subject is mentally ill or suffering from substance abuse. Nothing in this section, however, shall limit the individual's privilege against self-incrimination.

(h) The subject of the petition in a hearing under this section has the right to secure an independent medical or psychological evaluation and present evidence thereon.

(i) If after hearing all relevant evidence, including the result of any diagnostic examination ordered by the court, the court finds that an individual is not a person requiring medical, psychiatric, psychological, or other rehabilitative treatment or supervision, the court shall order that the individual be discharged if the individual has been hospitalized prior to the hearing.

(j) If the court finds that the criteria for involuntary hospitalization under section 334-60.2(1) has been met beyond a reasonable doubt and that the criteria under sections 334-60.2(2) and 334-60.2(3) have been met by clear and convincing evidence, the court may issue an order to any law enforcement

officer to deliver the subject to a facility that has agreed to admit the subject as an involuntary patient, or if the subject is already a patient in a psychiatric facility, authorize the facility to retain the patient for treatment for a period of ninety days unless sooner discharged. The court may also authorize the involuntary administration of medication, where the subject has an existing order for assisted community treatment, issued pursuant to part VIII of this chapter, relating to assisted community treatment, and in accordance with the treatment prescribed by that prior order. An order of commitment shall specify which of those persons served with notice pursuant to section 334-60.4, together with such other persons as the court may designate, shall be entitled to receive any subsequent notice of intent to discharge, transfer, or recommit. The court shall forward to the Hawaii criminal justice data center all orders of involuntary civil commitment or information from all orders of involuntary civil commitment, as requested by the Hawaii criminal justice data center, which in turn shall forward the information to the Federal Bureau of Investigation, or its successor agency, for inclusion in the National Instant Criminal Background Check System database. The orders or information shall also be maintained by the Hawaii criminal justice data center for disclosure to and use by law enforcement officials for the purpose of firearms permitting or registration pursuant to chapter 134. This subsection shall apply to all involuntary civil commitments without regard to the date of the involuntary civil commitment.

(k) The court may find that the subject of the petition is an incapacitated or protected person, or both, under article V of chapter 560, and may appoint a guardian or conservator, or both, for the subject under the terms and conditions as the court shall determine. [L 1984, c 188, pt of §3; am L 1985, c 220, §1; gen ch 1985; am L 1994, c 58, §3; am L 1997, c 383, §47; am L 2004, c 161, §8; am L 2013, c 221, §§6, 24 and c 232, §4; am L 2014, c 87, §4; am L 2015, c 27, §4; am L 2016, c 114, §6]

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCF rule 81(b).

" **§334-60.6 Period of detention.** The psychiatric facility may detain a subject for a period of time ordered by the court not to exceed ninety days from date of admission unless sooner discharged by the facility pursuant to section 334-76 or section 334-74. At the end of the ninety-day period the subject shall

be discharged automatically except as provided in sections 704-406, 704-411, and 706-607, unless before expiration of the period and by a proceeding initiated pursuant to section 334-60.3 the facility obtains a court order for the subject's recommitment. Recommitment for a period not to exceed ninety days may not be ordered unless the court determines that the criteria for involuntary hospitalization set forth in section 334-60.2 continue to exist. If at the end of a recommitment period the court finds that the criteria for involuntary hospitalization set forth in section 334-60.2 continue to exist and are likely to continue beyond ninety days, the court may order recommitment for a period not to exceed one hundred eighty days.

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. [L 1984, c 188, pt of §3; gen ch 1985; am L 1988, c 44, §1]

" **§334-60.7 Notice of intent to discharge.** (a) For civil commitments that result directly from legal proceedings under chapters 704 and 706, when the administrator or attending physician of a psychiatric facility contemplates discharge of an involuntary patient because of expiration of the court order for commitment or because the patient is no longer a proper subject for commitment, as determined by the criteria for involuntary hospitalization in section 334-60.2, the administrator or attending physician shall provide notice of intent to discharge, or if the patient voluntarily agrees to further hospitalization, the administrator shall provide notice of the patient's admission to voluntary inpatient treatment. The following requirements and procedures shall apply:

- (1) The notice and a certificate of service shall be filed with the family court and served on those persons whom the order of commitment specifies as entitled to receive notice, by mail 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;
- (2) Any person specified as entitled to receive notice may waive this right in writing with the psychiatric facility;

- (3) If no objection is filed within five calendar days of mailing the notice, the administrator or attending physician of the psychiatric facility shall discharge the patient or accept the patient for voluntary inpatient treatment;
- (4) If any person specified as entitled to receive notice files a written objection, with a certificate of service, 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, 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 the criteria for involuntary hospitalization in section 334-60.2. The person filing the objection shall also notify the psychiatric facility by telephone on the date the objection is filed;
- (5) If the family court finds that the patient does not meet the criteria for involuntary hospitalization in section 334-60.2, the court shall issue an order of discharge from the commitment; and
- (6) If the family court finds that the patient does meet the criteria for involuntary hospitalization in section 334-60.2, the court shall issue an order denying discharge from the commitment.

(b) For civil commitments that do not result directly from legal proceedings under chapters 704 and 706, when the administrator or attending physician of a psychiatric facility contemplates discharge of an involuntary patient, the administrator or attending physician may assess whether an assisted community treatment plan is indicated pursuant to section 334-123 and, if so indicated, may communicate with an aftercare provider as part of discharge planning, as appropriate. [L 1984, c 188, pt of §3; am L 1988, c 44, §2; am L 2014, c 156, §1]

" **§334-61 Presumption; civil rights.** No presumption of insanity or legal incompetency shall exist with respect to any patient by reason of the patient's admission to a psychiatric facility under this chapter. The fact of the admission shall not in itself modify or vary any civil right of any such person, including but not limited to civil service statutes or rights relating to the granting, forfeiture, or denial of a license, permit, privilege, or benefit pursuant to any law, or the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, and to vote. If the

administrator of a psychiatric facility or the deputy is of the opinion that a patient should not exercise any civil right, application for a show cause order shall be made to the court under the above proceedings after notice pursuant to section 334-60.4. [L 1976, c 130, pt of §4; am L 1977, c 76, pt of §3; am L 1985, c 68, §7]

" **[§334-62] Service of process and papers upon patients.**

(a) Service of process and papers upon a patient in a psychiatric facility or a patient on authorized or unauthorized absence from a psychiatric facility shall be made in the following manner:

- (1) Service of process and papers relating to the involuntary hospitalization of the patient shall be made directly and personally upon the patient and shall also be made personally or by certified mail upon the patient's guardians and the public defender, the patient's attorney or court-appointed attorney; otherwise, service upon the patient shall be incomplete. A copy of the legal process or paper served on a patient under this paragraph shall be given to the administrator of the psychiatric facility or the administrator's deputy and shall be filed with the records of the patient.
- (2) Service of process and papers not relating to the involuntary hospitalization of the patient shall be made directly and personally upon the patient, the patient's guardians, and the administrator of the psychiatric facility or the administrator's deputy; otherwise, service upon the patient shall be incomplete and shall not give the issuing court or agency jurisdiction over the person of the patient. A legal process or paper served under this paragraph shall be filed with the records of the patient, and the administrator of the psychiatric facility or the administrator's deputy shall immediately inform the court or other agency out of which the process or paper issued, in writing, of the date of service and of the mental and physical condition of the patient.

(b) Neither the administrator nor anyone connected with a psychiatric facility shall accept service of process or papers on behalf of a patient. [L 1976, c 130, pt of §4; am L 1977, c 76, pt of §3; gen ch 1985]

"PART V. TRANSFER, LEAVE, AND DISCHARGE

§334-71 Transfer of patients between facilities. A patient at a psychiatric facility, including those held on court order, may be transferred to another psychiatric facility when the administrator of the sending facility determines that it would be in the best interest of the patient that the patient be transferred and the administrator of the receiving facility agrees to accept the patient; provided that prior notice of such transfer be given to the subject of such transfer and to those persons specified in a current order of commitment. If there is no current order of commitment, notice shall be given to those persons enumerated in section 334-60.4. [L 1967, c 259, pt of §1; HRS §334-71; am L 1976, c 130, §5; am L 1977, c 76, §4; am L 1985, c 68, §8]

" **§334-72 Transfer of veterans.** (a) Upon receipt of a certificate of the Veterans Administration or other agency of the United States that facilities are available for the care and treatment of a person previously admitted to a psychiatric facility and that the person is eligible for such care and treatment, the administrator of the psychiatric facility or the administrator's deputy may transfer the person to the Veterans Administration or other agency of the United States for care and treatment, except a person admitted or committed on court order as provided in chapters 571, 704 and 706 or transferred under section 334-74. The administrator of the sending facility or the administrator's deputy shall send prior notice of such transfer as provided in section 334-71. A person transferred under this section shall be deemed to be admitted for hospitalization to any facility of the Veterans Administration or other agency of the United States pursuant to the provisions of part IV. The person, when admitted to a facility operated by or contracting with the Veterans Administration or other agency of the United States, within or without this State, shall be subject to the rules and regulations of the Veterans Administration or other agency of the United States. The chief officer of the Veterans Administration or of the institution operated by any other agency of the United States to which the person is so admitted shall with respect to such person be vested with the same powers as administrators of licensed psychiatric facilities within this State with regard to detention, transfer, authorized absence or discharge. Jurisdiction is retained in this State and specifically in the family court of the circuit in which the sending facility was located to inquire at any time into the mental and physical condition of the person so admitted and to determine the necessity for the person's continued hospitalization, and all transfers under this section are so conditioned.

(b) The judgment or order of hospitalization by a court of competent jurisdiction of another state, the District of Columbia, Guam, or Puerto Rico, hospitalizing a person with the Veterans Administration or other agency of the United States for care and treatment shall have the same force and effect with respect to the hospitalized person while in this State with the Veterans Administration or other agency of the United States as in the state or district in which the judgment or order was made, and the court making the judgment or order shall be deemed to have retained jurisdiction of the person so hospitalized for the purpose of inquiring into the mental and physical condition of the person and of determining the necessity for the person's continued hospitalization. Consent is hereby given to the application of the law of the state or district with respect to the authority of the chief officer of the Veterans Administration or of the institution operated by any other agency of the United States in which the person is hospitalized to detain, transfer, place on authorized absence, or discharge the hospitalized person.

(c) Nothing in this section shall be construed as conferring upon the department of health or any other agency or officer of this State any power of licensing, supervision, inspection, or control over hospitals or other institutions operated by the Veterans Administration or other agency of the United States, or over any officers or employees thereof. [L 1967, c 259, pt of §1; HRS §334-72; am L 1976, c 130, §6; gen ch 1985]

" **§334-73 REPEALED.** L 1976, c 130, §7.

" **§334-74 Transfer of residents of correctional facilities.** If any resident of a state correctional facility is in need of acute psychiatric treatment for mental illness, the director of public safety or the officer in charge of the correctional facility may file with the director an application for the transfer of the resident to a facility operated by the department of health or at which the director of health contracts for services, together with the certificate of a psychiatrist or psychologist employed by the department showing the need for such treatment, and, upon approval of the application by the director, the official having custody of the resident shall transfer the resident to the facility operated by the department or at which the director contracts for care and treatment. The official effecting the transfer of the resident shall keep the director informed of the maximum period of commitment of the resident to the director of public safety, and, if the continued care of the resident beyond the expiration

of the period is deemed necessary, the director shall institute the procedures required to detain the resident as a patient notwithstanding the resident's release from the state correctional facility; provided that a judicial hearing pursuant to sections 334-60.2 to 334-60.7 be held by the same circuit court that sentenced the resident. In the event that discharge from the facility operated by the department or at which the director contracts for services occurs before the expiration of the maximum period of commitment or confinement, the resident shall be returned to the appropriate state correctional facility.

As used in this section, "resident" means any person serving a sentence in a state correctional facility or any child or minor detained in a state correctional facility. [L 1967, c 259, pt of §1; HRS §334-74; am L 1976, c 130, §8; am L 1977, c 76, §5; am L 1985, c 68, §9; am L 1987, c 338, §10; am L 1988, c 14, §1; am L 1989, c 211, §8; am L 1994, c 153, §3; am L 1999, c 119, §6]

Cross References

Intermediate sanctions for selected offenders and defendants, see §§353-10.5, 353-63.5, and 706-605.1.

" **§334-75 Authorized absence.** The administrator of a psychiatric facility or the administrator's deputy may grant authorized absence from the facility to any patient upon such terms and conditions as the administrator or the administrator's deputy may deem advisable, and, as to a patient admitted or committed on court order, with the prior approval of the court for periods in excess of thirty days, and without the approval of the court for periods up to thirty days, or, as to a patient transferred under section 334-74, with the prior approval of the official effecting the transfer; provided that if a patient has been admitted or committed on court order after having been charged with a felony or misdemeanor pursuant to chapter 707, an absence can be authorized only with the prior approval of the court, except where the absence is supervised by the presence of someone from the facility. [L 1967, c 259, pt of §1; HRS §334-75; am L 1972, c 141, §1; am L 1982, c 42, §1; gen ch 1985]

Case Notes

Court approval is necessary to authorize leaves from psychiatric facility even if patient has been acquitted of the chapter 707 charges. 69 H. 370, 742 P.2d 373.

" **§334-76 [OLD] REPEALED.** L 1976, c 130, §9.

§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:

- (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
- (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. [L 1977, c 76, §6; am L 1985, c 68, §10 and c 220, §2; am L 1988, c 44, §3; am L 2014, c 156, §2]

"PART VI. APPEAL AND REVIEW

§334-81 Request for hearing. At any time after the admission of a patient to a psychiatric facility under part IV of this chapter or after the transfer of a patient to another psychiatric facility under section 334-71, the patient or, on the patient's behalf, any member of the patient's family, relative, friend, or responsible person, may obtain a judicial determination of the regularity of the patient's admission or of the need for the patient's continued hospitalization by filing a written request therefor in the family court of the circuit in which the psychiatric facility is located. The form of the request shall be prescribed and supplied free of charge by the court, and the proceedings in connection therewith shall be

styled "In the Interest of (the named patient)". The administrator of the psychiatric facility shall assist the patient in obtaining legal counsel if the patient objects to the patient's admission or continued hospitalization. [L 1967, c 259, pt of §1; HRS §334-81; am L 1977, c 76, §7; gen ch 1985]

Law Journals and Reviews

For description of procedure under chapter, see Thou Shalt Not Commit, Samuel P. King. 5 HBJ 46.

" **§334-82 Order to show cause; guardian ad litem.**

Immediately upon receipt of a request, the court shall issue an order to show cause directed to the administrator of the facility and commanding the administrator to show cause at a date and time certain not later than five days thereafter why the patient should not be discharged forthwith. A copy of the request shall be attached to the order to show cause. The form of the order to show cause shall be prescribed and supplied free of charge by the court. The order to show cause shall issue without cost and may be served as any other civil process or by any responsible person appointed by the court for that purpose. At any stage of the proceedings, the court may appoint a guardian ad litem for the patient. The guardian ad litem may be a member of the bar of the court or any other responsible person. Service on the administrator may be effected by leaving certified copies of the order to show cause and request at the facility with any person exercising authority. [L 1967, c 259, pt of §1; HRS §334-82; gen ch 1985]

Rules of Court

Service, see HRCP rule 4.

Guardian ad litem, see HRCP rule 17(c).

" **§334-83 Hearing.** The court may take testimony and may examine the patient and after a full and complete hearing shall render a decision in writing, setting forth its findings of fact and conclusions of law. The court may award a fee to the guardian ad litem to be paid out of any property of the patient or funds of the court available therefor. [L 1967, c 259, pt of §3; HRS §334-83; am L 1973, c 93, pt of §2]

" **§334-84 Order.** If it is determined that the admission of the patient is regular and that the patient needs continued hospitalization, the court shall issue an order authorizing the detention of the patient at the facility. If it is determined

that the admission of the patient is not regular or that the patient does not need continued hospitalization, the court shall issue an order requiring the immediate discharge of the patient from the facility. [L 1967, c 259, pt of §1; HRS §334-84]

Cross References

Report of adjudication to county clerks, see §806-76.

" **§334-85 Further hearings.** A judicial determination under this part regarding the detention of a patient at the same psychiatric facility may not be demanded as of right more often than once in a period of six months. [L 1967, c 259, pt of §1; HRS §334-85]

" **§334-86 Status of patient pending hearing.** Unless otherwise ordered by the court, the authority of the psychiatric facility to detain a patient shall not be diminished by the institution of proceedings under this part until a final order requiring the discharge of the patient. [L 1967, c 259, pt of §1; HRS §334-86]

"PART VII. COMMUNITY RESIDENTIAL TREATMENT SYSTEM

Cross References

Intermediate sanctions for selected offenders and defendants, see §§353-10.5, 353-63.5, and 706-605.1.

§334-101 Establishment. It is the intent of the legislature to establish a statewide system of residential treatment programs which provide a range of available services which will be alternatives to institutional care and are based on principles of residential, community-based treatment.

It is further the intent of the legislature that community residential mental health programs in the State of Hawaii be developed in accordance with the guidelines and principles set forth in this part. To this end, the department may implement the community residential treatment system described in this part either with available allocations or applying for funds from the legislature. Any private, nonprofit, or public organization, or both, within the State is eligible to submit an application for operation under this part.

It is further the intent of the legislature to provide guidelines for such a system to the applicants, while allowing each applicant the flexibility to design a system specific to the nature of the community and the needs of the clients.

It is further the intent of the legislature that the director, in authorizing programs which serve as alternatives to institutionalization, follow the guidelines and principles developed herein. [L 1980, c 221, pt of §2; am L 1986, c 237, §1]

" **[§334-102] Criteria.** The director shall use the following as criteria in determining the eligibility of each applicant:

- (1) Facilities:
 - (A) Settings, whether residential or day, shall be as close to a normal home environment as possible without sacrificing client safety or care;
 - (B) Residential treatment centers shall be relatively small, preferably fifteen beds or less, but in any case with the appearance of noninstitutional setting; and
 - (C) The individual elements of the system, where possible, shall be in separate facilities and not part of one large facility attempting to serve an entire range of clients;
- (2) Staffing patterns:
 - (A) Staffing patterns shall reflect, to the maximum extent feasible, at all levels, the cultural, linguistic, ethnic, sexual, and other social characteristics of the community the facility serves;
 - (B) The programs shall be designed to use appropriate multidisciplinary professional consultation and staff to meet the specific diagnostic and treatment needs of the client; and
 - (C) Programs shall be encouraged to use paraprofessionals where appropriate;
- (3) Programs:
 - (A) The programs shall have a rehabilitation focus which encourages the client to develop the skills to become self-sufficient and capable of increasing levels of independent functioning where appropriate. They shall include prevocational and vocational programs;
 - (B) The programs shall encourage the participation of the clients in the daily operation of the setting in development of treatment and rehabilitation planning and evaluation;
 - (C) Participation in any element of the system shall not preclude the involvement of clients in individual therapy. Individual therapists of clients, where possible, shall be directly

involved in the development and implementation of a treatment plan;

- (4) Coordination: The programs shall demonstrate specific linkages with one another, and with the general treatment and social service system, as a whole. These connections should not be limited to the mental health system, but shall include, whenever possible, community resources utilized by the general population. To ensure coordination occurs, each program shall include a case management system in which the case manager serves as a coordinator to assure the cooperative operation of the various elements of the system and to act as an active advocate for the clients in the system. The case manager shall assure that each client receives the appropriate type of service. The case manager shall meet regularly with clients, work closely with program staff, and serve as an advocate. The case manager shall work directly with the client and the system to assure continuity of care between the service elements of the system. [L 1980, c 221, pt of §2]

" **§334-103 Program elements.** The following shall be the program elements of the system. These shall be designed to provide, at every level, alternatives to institutional settings. Applicants applying to operate program elements shall show how each of these elements works with the current programs in the community the facility will serve. Applicants may apply for operation under the following program elements:

- (1) A short-term crisis residential alternative to hospitalization for individuals experiencing an acute episode or situational crisis. The program shall be available for admissions twenty-four hours a day, seven days a week. The primary focus of this element shall be on reduction of the crisis, stabilization, diagnostic evaluation, and assessment of the person's existing support system, including recommendations for referrals upon discharge. This service in the program shall be designed for persons who would otherwise be referred to an acute inpatient psychiatric unit;
- (2) A long-term residential treatment program for clients who would otherwise be living marginally in the community with little or no service support, and who would return many times to the hospital for treatment. It also will serve those who are referred to, and maintained in, state facilities or nursing homes, or private or public facilities or programs under

contract with the director pursuant to section 334-2.5, because they require long-term, intensive support. This service shall be designed to provide a rehabilitation program for the so-called "chronic" patient who needs long-term support in order to develop independent living skills. This program goes beyond maintenance to provide an active rehabilitation focus for these individuals;

- (3) A transitional residential program designed for persons who are able to take part in programs in the general community, but who, without the support of counseling as well as the therapeutic community, would be at risk of returning to the hospital or becoming homeless by reason of serious and persistent mental health challenges. These programs may employ a variety of staffing patterns and are for persons who are expected to move toward a more independent living setting. The clients shall be expected to play a major role in the functioning of the household and shall be encouraged to accept increasing levels of responsibility, both in the residential community and in the community as a whole. Residents are required to be involved in daytime activities outside of the facility that are relevant to their personal goals and conducive to their achieving more self-sufficiency; or
- (4) A semisupervised, independent, but structured living arrangement for persons who do not need the intensive support of the system elements of paragraph (1), (2), or (3), but who, without some support and structure, are at risk of requiring hospitalization or becoming homeless by reason of serious and persistent mental health challenges. The small cooperative housing units shall function as independent households with direct linkages to staff support in case of emergencies, as well as for regular assessment and evaluation meetings. Individuals may use satellite housing as a transition to independent living or may remain in this setting indefinitely in order to avoid the need for more intensive settings. This element is for persons who only need minimum professional or paraprofessional support in order to live in the community. These units should be as normative as the general living arrangements in the communities in which they are developed. [L 1980, c 221, pt of §2; am L 1985, c 219, §1; am L 1986, c 237, §2; am L 1997, c 220, §3; am L 1999, c 119, §7; am L 2016, c 186, §5]

" **[§334-104] Least restrictive level of service.** The system shall be developed in such a way that clients may move within the system to the most appropriate, least restrictive level of service. The system shall also allow for direct referral of clients, without requiring that a person pass through the entire system to reach the most appropriate level. [L 1980, c 221, pt of §2]

" **[§334-105] Evaluation.** An adequate proportion of funds shall be applied to the development and implementation of an appropriate evaluation mechanism. The department, in conjunction with the programs, shall specify the criteria to be used in the evaluation of each program and in the evaluation of the entire system.

By June 30, 1982, the department shall conduct or contract for the evaluation. Evaluation reports shall be transmitted to the legislature. [L 1980, c 221, pt of §2]

" **§334-106 License or accreditation required.** Facilities operated pursuant to this part shall be licensed under existing licensing categories, including provisional licenses, or accredited pursuant to section 321-193(10). Facilities operated pursuant to section 334-103(1) or (2) to provide services to mentally ill adults shall be licensed, including provisional licenses. Facilities operated to provide services to mentally ill adults pursuant to section 334-103(3) or (4) shall be accredited rather than licensed. The director shall review the appropriateness of these licensing and accreditation categories. If the director determines that new licensing or accreditation categories are necessary, the director shall issue a report and recommendation to the legislature. [L 1980, c 221, pt of §2; gen ch 1985; am L 1986, c 237, §3; am L 2002, c 54, §1]

"PART VIII. ASSISTED COMMUNITY TREATMENT

Note

Part heading amended by L 2013, c 221, §§2, 24; L 2016, c 114, §6.

Cross References

Intermediate sanctions for selected offenders and defendants, see §§353-10.5, 353-63.5, and 706-605.1.

§334-121 Criteria for assisted community treatment. A person may be ordered to obtain assisted community treatment if the family court finds that:

- (1) The person is mentally ill or suffering from substance abuse; and
- (2) The person is unlikely to live safely in the community without available supervision based on the professional opinion of a psychiatrist; and
- (3) The person, at some time in the past: (A) has received inpatient hospital treatment for mental illness or substance abuse or (B) has been found to be imminently dangerous to self or others, as a result of mental illness or substance abuse; and
- (4) The person, based on the person's treatment history and current condition, is now in need of treatment in order to prevent a relapse or deterioration which would predictably result in the person becoming imminently dangerous to self or others; and
- (5) The person has a history of a lack of adherence to treatment for mental illness or substance abuse, and the person's current mental status or the nature of the person's disorder limits or negates the person's ability to make an informed decision to voluntarily seek or comply with recommended treatment; and
- (6) The assisted community treatment is medically appropriate, and in the person's medical interests; and
- (7) Considering less intrusive alternatives, assisted community treatment is essential to prevent the danger posed by the person. [L 1984, c 251, pt of §1; am L 1992, c 138, §2; am L 2013, c 221, §§7; 24; am L 2016, c 114, §6]

" **§334-122 Definitions.** For the purposes of this part:

"Assisted community treatment" includes medication specifically authorized by court order; individual or group therapy; day or partial day programming activities; services and training, including educational and vocational activities; supervision of living arrangements; and any other services prescribed to either alleviate the person's disorder or disability, maintain or maximize semi-independent functioning, or prevent further deterioration that may reasonably be predicted to result in the need for hospitalization or more intensive or restrictive levels of care in the community or incarceration for criminal behavior.

"Designated mental health program" includes a state-operated or private provider who is authorized to provide mental

health services, including but not limited to inpatient treatment, outpatient treatment, case management, day treatment, or crisis services.

"Interested party" means a parent, grandparent, spouse, sibling, adult child, reciprocal beneficiary, service provider, case manager, outreach worker, or mental health professional.

"Subject of the order" means a person who has been ordered by the court to obtain assisted community treatment.

"Subject of the petition" means the person who, under a petition filed under section 334-123, is alleged to meet the criteria for assisted community treatment.

"Treating psychiatrist" means the psychiatrist who is responsible for the management and supervision of a person's treatment under order of the court. [L 1984, c 251, pt of §1; am L 2013, c 221, §§8, 24; am L 2016, c 114, §6]

Note

Definition of "outpatient treatment" changed to "assisted community treatment". L 2013, c 221, §8.

" **§334-123 Initiation of proceeding for assisted community treatment.** (a) Any interested party may file a petition with the family court alleging that another person meets the criteria for assisted community treatment. The petition shall state:

- (1) Each of the criteria numbered (1) through (7) for assisted community treatment, as set out in section 334-121;
- (2) Petitioner's good faith belief that the subject of the petition meets each of the criteria numbered (1) through (7) set forth in section 334-121;
- (3) Facts which support petitioner's good faith belief that the subject of the petition meets each of the criteria numbered (1) through (7) set forth in section 334-121; and
- (4) That the subject of the petition is present within the county where the petition is filed.

The hearing on the petition need not be limited to the facts stated in the petition. The petition shall be executed subject to the penalties of perjury.

(b) The petition may be accompanied by a certificate of a licensed psychiatrist who has examined the subject of the petition within twenty calendar days prior to the filing of the petition. For purposes of the petition, an examination shall be considered valid so long as the licensed psychiatrist has obtained enough information from the subject of the petition to reach a diagnosis of the subject of the petition, and to express

a professional opinion concerning the same, even if the subject of the petition is not fully cooperative. [L 1984, c 251, pt of §1; am L 1986, c 339, §44; am L 2013, c 221, §§9, 24; am L 2015, c 231, §1; am L 2016, c 114, §6]

Note

Annual report to legislature regarding assisted community treatment, beginning with the 2015 legislature. L 2013, c 221, §§21, 24; L 2015, c 231, §7; L 2016, c 114, §6.

" **§334-124 Hearing date.** The family court shall set a hearing date on a petition as soon as possible. [L 1984, c 251, pt of §1; am L 2013, c 221, §10; am L 2015, c 231, §2]

" **§334-125 Notice.** (a) Notice of the hearing shall be:

- (1) Served personally on the subject of the petition pursuant to family court rules;
- (2) Served personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, to as many as are known to the petitioner of the subject's spouse or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed;
- (3) Served on the public defender, attorney for the subject of the petition, or other court-appointed attorney as applicable; and
- (4) Given to such other persons as the court may designate.

(b) The notice shall include the following:

- (1) The date, time, place of hearing, a clear statement of the purpose of the proceedings and possible consequences to the subject, and a statement of the legal standard upon which assisted community treatment is being considered;
- (2) A copy of the petition;
- (3) Notice that the subject of the petition is entitled to the assistance of an attorney, and that the public defender has been notified of these proceedings; and
- (4) Notice that if the subject does not want to be represented by the public defender, the subject may contact the subject's own attorney.

(c) Notice of all subsequent hearings shall be served in accordance with subsections (a) and (b), and in accordance with all applicable family court rules relating to service of notice, including that service need not be made on parties in default for failure to appear. [L 1984, c 251, pt of §1; am L 1997, c

383, §48; am L 2013, c 221, §§11, 24; am L 2015, c 231, §3; am L 2016, c 114, §6]

Rules of Court

Service of process, see HFCR rule 4.

" **§334-126 Hearing on petition.** (a) The court may adjourn or continue a hearing for failure to timely notify a person entitled to be notified.

(b) The time and form of the procedure incident to hearing the issues in the petition shall be provided by family court rule and consistent with this part.

(c) Hearings may be held at any convenient place within the circuit. The subject of the petition, any interested party, or the family court upon its own motion may request a hearing in another court because of inconvenience to the parties, witnesses, or the family court or because of the subject's physical or mental condition.

(d) The hearing shall be closed to the public, unless the subject of the petition requests otherwise.

(e) The subject of the petition shall be present at the hearing. However, if the subject has been served with the petition and does not appear at the hearing, the court may appoint a guardian ad litem to represent the best interests of the subject through the proceedings.

(f) Notwithstanding chapter 802 to the contrary, the public defender or other court-appointed counsel shall represent the subject upon filing of the petition. A copy of the petition shall be served upon the public defender by the petitioner. The public defender or the court-appointed counsel may withdraw upon a showing that the subject is not indigent. If the subject does not desire representation, the court may discharge the attorney after finding that the subject understands the proceedings and the relief prayed for in the petition. Nothing in this subsection shall be construed to:

- (1) Require the subject of the petition to accept legal representation by the public defender or other court-appointed counsel; or
- (2) Prevent the subject of the petition from obtaining their own legal counsel to represent them in any proceeding.

(g) If the subject of the petition is represented by an attorney, the attorney shall be allowed adequate time for investigation of the matters at issue and for preparation, and shall be permitted to present the evidence that the attorney believes necessary for a proper disposition of the proceeding.

(h) No subject of the petition shall be ordered to receive assisted community treatment unless at least one psychiatrist testifies in person at the hearing who has personally assessed the subject, within a reasonable time before the filing of the petition up to the time when the psychiatrist provides oral testimony at court. The psychiatrist's testimony shall state the facts which support the allegation that the subject meets all the criteria for assisted community treatment, provide a written treatment plan, which shall include non-mental health treatment if appropriate, provide the rationale for the recommended treatment, and identify the designated mental health program responsible for the coordination of care.

If the recommended assisted community treatment includes medication, the psychiatrist's testimony shall describe the types or classes of medication which should be authorized, and describe the physical and mental beneficial and detrimental effects of such medication.

(i) The subject of the petition may secure a psychiatric examination and present the findings as evidence at the hearing. The subject shall be entitled to a psychiatric examination at a community mental health center if the subject so desires, and if an examination has not already been conducted at a community mental health center which will lead to psychiatric testimony at the hearing. [L 1984, c 251, pt of §1; am L 2013, c 221, §§12, 24; am L 2015, c 231, §4; am L 2016, c 114, §6]

" **§334-127 Disposition.** (a) If after hearing all relevant evidence, including the results of any diagnostic examination ordered by the family court, the family court finds that the subject of the petition does not meet the criteria for assisted community treatment, the family court shall dismiss the petition.

(b) If after hearing all relevant evidence, including the results of any diagnostic examination ordered by the family court, the family court finds that the criteria for assisted community treatment under section 334-121(1) have been met beyond a reasonable doubt and that the criteria under section 334-121(2) to 334-121(7) have been met by clear and convincing evidence, the family court shall order the subject to obtain assisted community treatment for a period of not more than one year. The written treatment plan submitted pursuant to section 334-126(h) shall be attached to the order and made a part of the order.

If the family court finds by clear and convincing evidence that the beneficial mental and physical effects of recommended medication outweigh the detrimental mental and physical effects, if any, the order may authorize types or classes of medication

to be included in treatment at the discretion of the treating psychiatrist.

The court order shall also state who should receive notice of intent to discharge early in the event that the treating psychiatrist determines, prior to the end of the court ordered period of treatment, that the subject should be discharged early from assisted community treatment.

(c) The family court shall also designate on the order the treating psychiatrist who is to be responsible for the management and supervision of the subject's treatment, or shall assign an administrator of a designated mental health program to, in turn, designate the treating psychiatrist during the treatment period without court approval, and may designate either a publicly employed psychiatrist, or a private psychiatrist, provided that the private psychiatrist shall agree to the designation. The order for assisted community treatment shall be subject to the Health Care Privacy Harmonization Act, [chapter 323B].

(d) Nothing in this section shall preclude the subject's stipulation to the continuance [of] an existing court order. [L 1984, c 251, pt of §1; am L 2013, c 221, §§13, 24; am L 2016, c 114, §§3, 6]

" **§334-128 Treatment costs and fees.** Private treatment pursuant to the court order shall be at the expense of the subject of the petition, except to the extent such charges are covered by other laws or programs. Treatment through a designated mental health program shall be pursuant to its fee schedules; however, the subject of the order shall not be denied treatment by a designated mental health program for failure to pay the fees. [L 1984, c 251, pt of §1; am L 2013, c 221, §§14, 24; am L 2016, c 114, §6]

" **§334-129 Failure to comply with assisted community treatment.** (a) A treating psychiatrist may prescribe or administer to the subject of the order reasonable and appropriate medication or medications, if specifically authorized by the court order, and treatment which is consistent with accepted medical standards and the family court order, including the written treatment plan submitted pursuant to section 334-126(h).

(b) No subject of the order shall be physically forced to take medication under a family court order for assisted community treatment unless the subject is within an emergency department or admitted to a hospital, subsequent to the date of the current assisted community treatment order.

(c) A subject may be transported to a designated mental health program, or a hospital emergency department, for failure to comply with an order for assisted community treatment via the following methods:

(1) By an interested party with the consent of the subject of the order; or

(2) In accordance with section 334-59.

(d) The designated mental health program's treating psychiatrist or psychiatrist's designee shall make all reasonable efforts to solicit the subject's compliance with the prescribed treatment. If the subject fails or refuses to comply after the efforts to solicit compliance, the treating psychiatrist shall assess whether the subject of the order meets criteria for admission to a psychiatric facility under part IV of this chapter, and proceed with the admission pursuant to section 334-59(a)(2) or (3); provided that the refusal of treatment shall not, by itself, constitute a basis for involuntary hospitalization. [L 1984, c 251, pt of §1; am L 2013, c 221, §§15, 24; am L 2016, c 114, §§4, 6]

" **§334-130 Period of assisted community treatment.** (a) The assisted community treatment order shall continue to apply to the subject, for the duration specified in the order, regardless of whether the treatment setting changes.

(b) A subject of assisted community treatment is automatically and fully discharged at the end of the family court ordered period of treatment, a period of not more than one year, unless a new family court order has been obtained as provided hereinbelow.

(c) Nothing in this section shall preclude the subject's stipulation to the continuance [of] an existing court order. [L 1984, c 251, pt of §1; am L 2013, c 221, §§16, 24; am L 2016, c 114, §§5, 6]

" **§334-131 Notice of intent to discharge.** (a) When the treating psychiatrist contemplates discharge for a subject of the order because of expiration of the court order or because the subject of the order is no longer a proper subject for assisted community treatment, as determined by the criteria in section 334-121, the treating psychiatrist shall provide notice of intent to discharge.

(b) The notice shall be filed with the family court which issued the order for assisted community treatment, and served by personal service or by certified mail on those persons whom the order for assisted community treatment specifies as entitled to receive notice.

(c) The notice of intent to discharge shall be mailed at least ten days prior to the intended date of discharge.

(d) If no objection is filed under section 334-132 prior to the intended date of discharge, the subject of the order is thereupon fully discharged from assisted community treatment. [L 1984, c 251, pt of §1; am L 2013, c 221, §§17, 24; am L 2016, c 114, §6]

" **§334-132 Objection to discharge.** (a) If any person specified as entitled to receive notice files a written objection with the family court on the grounds that the subject of the order is a proper subject for assisted community treatment, the family court shall conduct a hearing to determine if the subject of the order still meets the criteria for assisted community treatment in section 334-121. The hearing shall be conducted as provided under section 334-134.

(b) If the family court finds that the subject of the order continues to meet the criteria for assisted community treatment in section 334-121, the family court shall order the subject to continue the treatment for the unexpired period of its earlier order.

(c) If the family court finds that the subject of the order does not meet the criteria for assisted community treatment in section 334-121, the court shall dismiss the objection and order the early discharge of the subject. [L 1984, c 251, pt of §1; am L 2013, c 221, §§18, 24; am L 2016, c 114, §6]

" **§334-133 Petition for additional period [of] treatment; hearing.** (a) Prior to the expiration of the period of assisted community treatment ordered by the family court, any interested party may file a petition with the family court for an order of continued assisted community treatment. The petition shall be filed and notice provided in the same manner as under sections 334-123 and 334-125.

(b) The family court shall hold a hearing on the petition and make its decision in the same manner as provided under sections 334-123 to 334-127. The family court may order the continued assisted community treatment for not more than one year after the date of the hearing pursuant to this section if the court finds that the criteria for assisted community treatment continue to exist and are likely to continue beyond one hundred eighty days.

(c) Nothing in this section shall preclude the subject's stipulation to the continuance [of] an existing court order. This section shall be in addition to the provisions on the

objection to discharge. [L 1984, c 251, pt of §1; am L 2013, c 221, §§19, 24; am L 2016, c 114, §6]

" **§334-134 Hearing for discharge.** Any person may petition the family court for the discharge of an order of assisted community treatment during the period of assisted community treatment after sixty days from the most recent hearing involving the subject of the order. The petition shall be filed, notice given, hearing held, and order made in the same manner as provided for the original petition alleging that the subject of the order met the criteria for assisted community treatment. [L 1984, c 251, pt of §1; am L 2013, c 221, §§20, 24; am L 2016, c 114, §6]

**"[PART IX.] CIVIL COMMITMENT FOR SUBSTANCE ABUSE
OUTPATIENT TREATMENT**

[§334-141] Definitions. As used in this part:

"Family member" means any individual who is a member of the immediate family of the person who is the subject of the petition, including spouse, child, parent, grandparent, or any related individual who resides in the same household as the individual who is the subject of the petition.

"Outpatient treatment" includes any substance abuse treatment provided through individual or group therapy, day or partial day programs, and intensive day treatment and which does not require the individual to reside on a twenty-four-hour basis in the facility for more than three days to benefit from the treatment program.

"Petitioner" means the family member who applies to the court for an order to require an individual to enter into an outpatient treatment program.

"Respondent" means the individual who is eighteen years of age or older who is the subject of the petition for a court order to require the individual to enter into an outpatient treatment program. [L 2004, c 44, pt of §20]

" **[§334-142] Petition.** Any family member may petition the family court for an order requiring a respondent to enter into an outpatient treatment program for substance abuse. The petition shall be in writing under penalty of perjury and include facts relating to:

- (1) The conduct of the respondent that indicates substance abuse or addiction;
- (2) The respondent's history of substance abuse, treatment, and relapse;
- (3) The effects of the respondent's conduct on the family;

- (4) The petitioner's good faith belief that the respondent poses an imminent danger to self or to others if the respondent does not receive treatment;
- (5) The availability of treatment and financial resources to pay for treatment; and
- (6) Any other reason for seeking court intervention. [L 2004, c 44, pt of §20]

" **[§334-143] Notice of hearing and service of petition on respondent.** The court shall set a time and date for hearing on the petition, within ten days of the filing of the petition. The notice of hearing and petition shall be served on the respondent. [L 2004, c 44, pt of §20]

" **[§334-144] Hearing and court order.** (a) The court shall conduct a hearing to consider all facts relating to the petition. The court may postpone the hearing and order the respondent to be assessed for substance abuse or addiction by a certified substance abuse counselor, at the petitioner's expense.

(b) The court may grant the petition if it finds clear and convincing evidence that:

- (1) The respondent has a history of substance abuse and refuses to enter treatment voluntarily;
- (2) The respondent has a family support system that will encourage and participate in the respondent's treatment program;
- (3) The respondent can benefit from outpatient treatment and is capable of surviving safely in the community with the family support system and if outpatient treatment is received;
- (4) The respondent or the petitioner has financial resources to pay for the outpatient treatment program;
- (5) The respondent poses an imminent danger to self or to others if treatment is not received; and
- (6) The respondent understands the nature of the proceeding and the effect of the court order to enter into outpatient treatment.

(c) The court order shall be limited to ninety days of outpatient treatment. Upon renewal of the petition, the court may extend the petition for an additional ninety days. [L 2004, c 44, pt of §20]

" **[§334-145] Treatment costs, fees, and costs for petition process.** The petitioner shall bear all fees and costs related to bringing the petition. The petitioner or respondent shall bear all costs of private treatment. Nothing in this part

authorizes publicly funded substance abuse treatment. However, if the respondent is eligible to receive publicly funded treatment and such a program is available for the respondent, the court may order the treatment in such a program. [L 2004, c 44, pt of §20]

" **[§334-146] Discharge.** If the respondent successfully completes the outpatient treatment program and is discharged from the program prior to the end of the court-ordered treatment period, the court order shall automatically lapse. [L 2004, c 44, pt of §20]

" **[§334-147] Failure to comply with court order.** The court may impose sanctions for violation of the court order. [L 2004, c 44, pt of §20]

" **[§334-148] Application.** Notwithstanding any other law to the contrary, this part shall apply to all petitions filed by family members seeking involuntary outpatient commitment of the respondent with substance abuse as the primary diagnosis. [L 2004, c 44, pt of §20]