

SB-122-SD-2

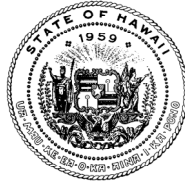
Submitted on: 3/16/2018 7:52:11 PM

Testimony for HHS on 3/20/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Support	No

Comments:

Conceptually, we support the intent of this measure and believe it is a good idea to provide notice to family members or a guardian or a close friend of an individual with a mental illness who is admitted to a hospital or discharged from a facility, or subject to legal proceedings such as a civil commitment. Family members are often kept in the dark about such matters and they could provide a very valuable support network. We realize that state and federal privacy laws might pose some challenges to the goals of this bill and we appreciate what the Senate has done so far in the SD2 version to attempt to sort that out. This is a work in progress and we would be happy to participate in any discussions to best help the legislature achieve the intent of this proposal. We are pleased to see the House consider this measure that was carried over from the 2017 session.



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**Testimony COMMENTING on SB122 SD2
RELATING TO MENTAL HEALTH**

REPRESENTATIVE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

Hearing Date and Time: Tuesday, March 20, 2018 at 8:30 a.m. Room Number: 329

1 **Fiscal Implications:** Undetermined at this time.

2 **Department Testimony:** The Department of Health (DOH) defers to the Department of
3 the Attorney General on this measure and would like to offer comments.

4 The purpose of this bill is to entitle designated family members and other
5 interested persons of a person having a mental health emergency to be notified of
6 certain procedures and actions, the option to be present in the courtroom for a hearing
7 on a petition for involuntary hospitalization or assisted community treatment (ACT), and
8 the option to receive copies of hearing transcriptions or recordings. This bill requires
9 the court to adjourn or continue a hearing on a petition for involuntary hospitalization or
10 assisted community treatment for failure to timely notify designated persons, with
11 certain exceptions.

12 The DOH has two concerns about this bill, the first is legal and the second is
13 negative impact on the operational aspects of civil commitment proceedings. The DOH
14 is concerned that this bill, as it is written, may violate the Health Insurance Portability
15 and Accountability Act. Civil commitments occur relatively frequently, approximately
16 570 petitions are filed and approximately 155 petitions are granted per year.

17 The participation and notice to interested family members and others may be
18 beneficial. However the effects of delaying or adjourning a legal proceeding pending this

1 participation may impose on the treating or committing facility significant operational and
2 fiscal consequences, and on the mental health service system increased strain if
3 patients are held longer than is medically required in prefer to satisfy a notice
4 requirement.

5 Thank you for the opportunity to testify.

6 **Offered Amendments:** None.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 122, S.D. 2, RELATING TO MENTAL HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

DATE: Tuesday, March 20, 2018

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Erin LS Yamashiro, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but suggests a modification.

The purpose of this bill is to provide notice to an individual's family when an involuntary civil commitment or an assisted community treatment proceeding is initiated. In addition, this bill would allow family members to attend the court hearings and access transcripts of these proceedings.

Section 2 of this bill would require the hospital to notify certain persons when an individual is transported or admitted under section 334-59, Hawaii Revised Statutes (HRS). Specifically, this section would require the director of a psychiatric facility to notify certain persons when an individual is admitted, examined, transferred, released, discharged, or transported under circumstances that would be in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. No. 104-191, 110 Stat. 1938 (1996). HIPAA prevents the release of medical information without the individual's consent unless the release of information fits one of the enumerated exceptions. See, 45 C.F.R. § 160.203. Among the many exceptions, the ones that would apply to this bill are (1) when an individual consents, (2) when there is an emergency situation, and (3) when the individual is incapacitated. See, 45 C.F.R. § 164.510.

Section 13, p. 24, lines 12-15, would require notice to persons listed in the order for assisted community treatment if an individual is transported or admitted to a hospital pursuant to section 334-59, HRS. To be consistent with the notice requirements in section 2 of this bill and to ensure that the bill would comply with HIPAA, we recommend the following amendment to this measure. In Section 13, p. 24, lines 12-15, subsection (e), which is being added to section 334-129, HRS, should be deleted and replaced with the following wording:

“(e) Notice of any transport or admission under this section shall be provided pursuant to section 334 - ____.”

We respectfully ask that the Committee make the suggested modification if it intends to pass this measure.

Chair Mizuno, Vice-Chair Kobayashi and members of the Health and human services Committee

Thank you for the opportunity to testify this morning on SB122 SD2

My name is Richard Creagan and as you know I am a legislator, but this morning I am testifying as a physician and private individual.

Mental Health is a very important topic and is a prominent cause of homelessness in our state. In attempting to help individuals with mental health challenges our state agencies are challenged with helping those individuals without trampling on their civil rights.

Our Hawaii State Hospital is currently dealing with some of those challenges.

In the not so distance past our Adult Mental Health Division was under the supervision of the federal judiciary for problems with how their clients were being treated.

It is has been a while since the Adult Mental Health Division has had an audit. I was told that one was going to be done in 2015 but because of the rapidly changing health environment that was postponed.

I think it is time such an audit is done.

I therefore respectfully request your consideration of an amendment as a part II of this measure to require an Audit by the State Auditor of the Adult Mental Health Division.

Thank you.



SB122 SD2 Family Members Notified for SMI Committed Patient’s Admission, Emergencies and Release

COMMITTEE ON HEALTH AND HUMAN SERVICES:

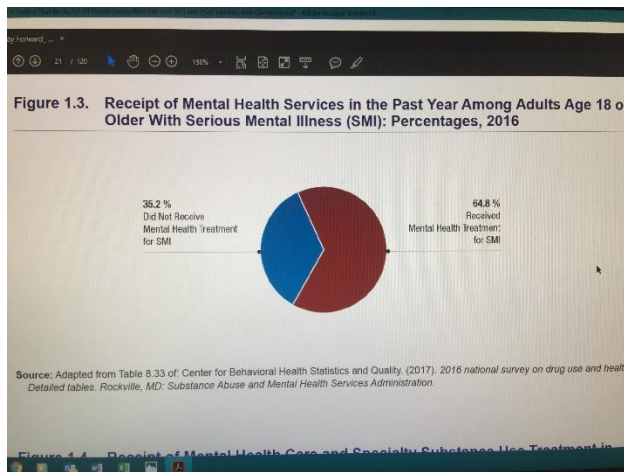
- Representative John Mizuno, Chair; Representative Bertrand Kobayashi, Vice Chair
- Tuesday, March 20, 2018: 8:30 am
- Conference Room 329

Hawaii Substance Abuse Coalition (HSAC) Supports SB122 SD2:

GOOD MORNING CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of almost 40 non-profit alcohol and drug treatment and prevention agencies.

The Federal government’s New Freedom Commission on Mental Health concluded that “for too many Americans with mental illnesses, the mental health services and supports they need remain fragmented, disconnected and often inadequate, frustrating the opportunity for recovery.”¹ Without access to support care, many family members are caught in impossible situations, become distraught, or give up entirely. We need government standards that are integrated with community solutions to improve care for highly disabled, mentally ill people.

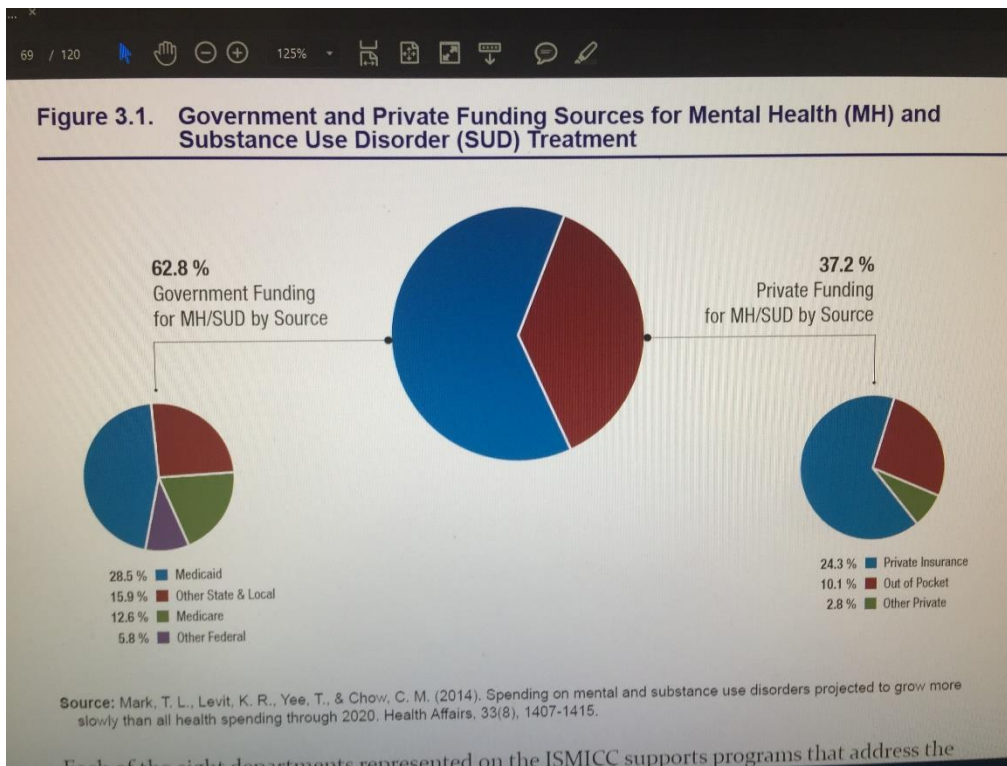
SB122 is part of a commitment to coordinate and collaborate at the state and local levels to develop systems tailored to the needs of each person by involving their family and caregivers when appropriate. As a community, we need community support because more people are receiving care and even more people will receive needed care in the future.



¹ New Freedom Commission on Mental Health: The Way Forward: Federal Action for a System That Works for All People Living with SMI and SED and Their Families and Caregivers, 21017. <https://store.samhsa.gov/shin/content/PEP17-ISMICC-RTC/PEP17-ISMICC-RTC.pdf>

Peer services, including peer family support, promotes recovery and resiliency through instilling hope, engaging in treatment, and improving outcomes. (Repper & Carter, 2011) and (Center for Health Care Strategies, 2013). Moreover, many people with severe mental illness (SMI) are financially dependent upon family and friends.

Major advances have been made in recent decades to promote peer and family support, with 40 states including this as a billable Medicaid optional service. As part of recovery support services to reduce homelessness and incarceration, families can play a major role for improving self-care and general health. Later, down the road as a means to improve care and reduces costs, we could help families, who often bear a significant emotional burden, to better support their SMI loved one by making available more learning experiences through functional family therapies.



We appreciate the opportunity to provide testimony and are available for questions.