
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The legislature finds that the initiation of
2 treatment for patients admitted to the Hawaii state hospital
3 needs to be expedient in order to address patients' medical
4 symptoms and protect the safety of patients and others. The
5 legislature further finds that the Hawaii state hospital is
6 utilized primarily for forensic commitments, and that addressing
7 patients' medical symptoms quickly at the initiation of
8 treatment will help maintain a safe and secure therapeutic
9 environment for patients and staff as well as have a positive
10 impact on patients' length of stay.

11 The legislature notes that the current method to obtain an
12 authorization to provide treatment over a patient's objection is
13 by a judicial hearing. Although unpredictable, on average the
14 time between petition and judicial hearing is nearly seventeen
15 days. Other states have responded to such unpredictability and
16 delay by developing a non-judicial, administrative mechanism to



1 review and authorize requests for treatment over a patient's
2 objection.

3 The purpose of this Act is to permit an administrative
4 order to overcome a patient's objection to medical treatment,
5 establish criteria for issuance of the administrative order, and
6 establish criteria for an administrative authorization process
7 to determine whether the administrative order should be issued.

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

11 **"PART . ADMINISTRATION OF TREATMENT OVER OBJECTION**

12 **§334-A Criteria for medical treatment over objection. A**

13 patient who has been committed to a psychiatric facility for
14 involuntary hospitalization or who is in the custody of the
15 director and residing in a psychiatric facility may be ordered
16 to receive treatment over the patient's objection, including the
17 taking or application of medication, if the court or an
18 administrative panel, by means of the administrative
19 authorization process established pursuant to section 334-B,
20 finds that:



- 1 (1) The patient suffers from a physical or mental disease,
2 disorder, or defect;
- 3 (2) The patient is dangerous to self or others;
- 4 (3) The proposed treatment is medically appropriate; and
- 5 (4) After considering less intrusive alternative
6 treatments for the patient's condition, the proposed
7 treatment is essential to forestall the danger posed
8 by the patient's condition.

9 **§334-B Criteria for administrative authorization process.**

10 (a) A patient who is in the administrative custody of the
11 director in a psychiatric facility may be ordered to receive
12 medical treatment over objection through an administrative
13 process that includes the following due process safeguards:

- 14 (1) The facility shall give notice to the patient of the
15 authorization process and the reasons for initiating
16 the process;
- 17 (2) The administrative panel shall consist of three
18 members with relevant clinical training and
19 experience, and who are not involved with the current
20 treatment of the patient;



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1 (3) The patient shall have the right to attend the
2 hearing, receive assistance from an advisor, cross-
3 examine witnesses, and present testimony and the
4 patient's own witnesses;

5 (4) The patient shall have the right to appeal the
6 decision of the administrative panel; and

7 (5) The panel shall issue a finding that, if left
8 untreated, the patient's illness would likely result
9 in negative effects on the health of the patient, and
10 that lack of treatment alone cannot satisfy the
11 requirement in section 334-A that the patient is
12 dangerous to self or others.

13 (b) Determinations made under the administrative process
14 specified in this section shall not be subject to contested case
15 proceedings under chapter 91.

16 (c) The department shall adopt administrative rules,
17 pursuant to chapter 91, to effectuate this part."

18 SECTION 3. Section 334E-2, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Any patient in a psychiatric facility shall be
21 afforded rights, and any psychiatric facility shall provide the



1 rights to all patients; provided that when a patient is not able
2 to exercise the patient's rights, the patient's legal guardian
3 or legal representative shall have the authority to exercise the
4 same on behalf of the patient. The rights shall include but not
5 be limited to the following:

- 6 (1) Access to written rules and regulations with which the
7 patient is expected to comply;
- 8 (2) Access to the facility's grievance procedure or to the
9 department of health as provided in section 334-3;
- 10 (3) Freedom from reprisal;
- 11 (4) Privacy, respect, and personal dignity;
- 12 (5) A humane environment;
- 13 (6) Freedom from discriminatory treatment based on race,
14 color, creed, national origin, age, and sex;
- 15 (7) A written treatment plan based on the individual
16 patient;
- 17 (8) Participation in the planning of the patient's
18 treatment plan;
- 19 (9) Refusal of treatment except in emergency situations or
20 when a court order or an administrative order pursuant



- 1 to [~~chapter 334, part X,~~] section 334-A has been
2 issued;
- 3 (10) Refusal to participate in experimentation;
- 4 (11) The choice of physician if the physician chosen
5 agrees;
- 6 (12) A qualified, competent staff;
- 7 (13) A medical examination before initiation of non-
8 emergency treatment;
- 9 (14) Confidentiality of the patient's records;
- 10 (15) Access to the patient's records;
- 11 (16) Knowledge of rights withheld or removed by a court or
12 by law;
- 13 (17) Physical exercise and recreation;
- 14 (18) Adequate diet;
- 15 (19) Knowledge of the names and titles of staff members
16 with whom the patient has frequent contact;
- 17 (20) The right to work at the facility and fair
18 compensation for work done; provided that work is
19 available and is part of the patient's treatment plan;
- 20 (21) Visitation rights, unless the patient poses a danger
21 to self or others; provided that where visitation is



- 1 prohibited, the legal guardian or legal representative
2 shall be allowed to visit the patient upon request;
- 3 (22) Uncensored communication;
- 4 (23) Notice of and reasons for an impending transfer;
- 5 (24) Freedom from seclusion or restraint, except:
- 6 (A) When necessary to prevent injury to self or
7 others;
- 8 (B) When part of the treatment plan; or
- 9 (C) When necessary to preserve the rights of other
10 patients or staff;
- 11 (25) Disclosure to a court, at an involuntary civil
12 commitment hearing, of all treatment procedures
13 [~~which~~] that have been administered prior to the
14 hearing; and
- 15 (26) Receipt by the patient and the patient's guardian or
16 legal guardian, if the patient has one, of this
17 enunciation of rights at the time of admission."

18 SECTION 4. In codifying the new sections added by section
19 2 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



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1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval;
4 provided that no administrative orders authorized to be issued
5 under this Act shall be issued prior to January 1, 2020;
6 provided further that the amendments made to section 334E-2,
7 Hawaii Revised Statutes, by section 3 of this Act shall not be
8 repealed when that section is reenacted on June 30, 2024,
9 pursuant to section 8 of Act 111, Session Laws of Hawaii 2017.

10

INTRODUCED BY:

John M. P. [Signature]
Calvin [Signature]

JAN 18 2019



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Report Title:

Medical Treatment; Treatment Over Objection; Administrative Authorization Process; Administrative Orders

Description:

Permits an administrative order to overcome a patient's objection to medical treatment. Establishes criteria for medical treatment over objection and the administrative authorization process for administratively ordering medical treatment over objection.

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