
A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

1 SECTION 1. The legislature finds that Act 221, Session
2 Laws of Hawaii 2013 (Act 221), was enacted with the intent of
3 helping individuals with serious mental illness obtain the
4 treatment and medication they needed, through the concept of
5 "assisted community treatment." Five years later, however, the
6 potential of assisted community treatment is no closer to
7 reality. Less than ten orders for court-mandated treatment
8 plans have been issued during the past five years.

9 In the statement of findings and purpose of Act 221, the
10 legislature found that the State had "identified serious
11 problems of high incarceration and hospitalization rates of
12 those with severe mental illness" and that the circumstances
13 reflected "a failure to provide needed treatment to persons who
14 may need it most and that failure is extremely costly." These
15 findings remain true today.



1 The purpose of this Act is to clarify the petitions,
2 procedures, and hearings for involuntary hospitalization and
3 assisted community treatment to promote mental health treatment.

4 SECTION 2. Section 334-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "dangerous to self" to
6 read as follows:

7 "Dangerous to self" means the person recently has:

8 (1) Threatened or attempted suicide or serious bodily
9 harm; or

10 (2) Behaved in such a manner as to indicate that the
11 person is unable, without supervision and the
12 assistance of others, to satisfy the need for
13 nourishment, essential medical care, including
14 treatment for a mental illness, shelter or self-
15 protection, so that it is probable that death,
16 substantial bodily injury, or serious physical
17 debilitation or disease will result unless adequate
18 treatment is afforded."

19 SECTION 3. Section 334-60.3, Hawaii Revised Statutes, is
20 amended by amending subsection (c) to read as follows:



1 "(c) The petition shall include the name, address, and
2 telephone number of at least one of the following persons in the
3 following order of priority: the subject of the petition's
4 spouse or reciprocal beneficiary, legal parents, adult children,
5 and legal guardian, if one has been appointed. If the subject
6 of the petition has no living spouse or reciprocal beneficiary,
7 legal parent, adult children, or legal guardian, or if none can
8 be found, [~~notice shall be served on~~] the petition shall include
9 the name, address, and telephone number of at least one of the
10 subject's closest adult relatives, if any can be found."

11 SECTION 4. Section 334-60.5, Hawaii Revised Statutes, is
12 amended by amending subsection (e) to read as follows:

13 "(e) The attorney general, the attorney general's deputy,
14 special deputy, or appointee shall present the case for hearings
15 convened under this chapter [~~, except~~]; provided that [~~the~~]:

16 (1) The attorney general, the attorney general's deputy,
17 special deputy, or appointee need not participate in
18 or be present at a hearing whenever a petitioner or
19 some other appropriate person has retained private
20 counsel who will be present in court and will present



1 to the court the case for involuntary
2 hospitalization[-]; and
3 (2) The attorney general, attorney general's deputy,
4 special deputy, or appointee need not present a case
5 the attorney general, attorney general's deputy,
6 special deputy, or appointee has determined to lack
7 merit."

8 SECTION 5. Section 334-60.7, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) [~~For civil commitments that do not result directly~~
11 ~~from legal proceedings under chapters 704 and 706, when] When
12 the administrator or attending physician of a psychiatric
13 facility contemplates discharge of an involuntary patient, the
14 administrator or attending physician [~~may~~] shall assess whether
15 an assisted community treatment plan is indicated pursuant to
16 section 334-123 and, if so indicated, [~~may communicate with an~~
17 ~~aftercare provider as part of discharge planning, as~~
18 ~~appropriate.] a licensed psychiatrist or advanced practice
19 registered nurse of the facility shall prepare the certificate
20 specified by section 334-123(b), and shall notify the department
21 of the attorney general, which shall assist with the petition~~~~



1 for assisted community treatment and the related court
2 proceeding. The facility may notify another mental health
3 program for assistance with the coordination of care in the
4 community."

5 SECTION 6. Section 334-121, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§334-121 **Criteria for assisted community treatment.** A
8 person may be ordered to obtain assisted community treatment if
9 the family court finds, based on the professional opinion of a
10 psychiatrist or advanced practice registered nurse with
11 prescriptive authority and who holds an accredited national
12 certification in an advanced practice registered nurse
13 psychiatric specialization, that:

- 14 (1) The person is mentally ill or suffering from substance
15 abuse;
- 16 (2) The person is unlikely to live safely in the community
17 without available supervision [~~based on the~~
18 ~~professional opinion of a psychiatrist or advanced~~
19 ~~practice registered nurse with prescriptive authority~~
20 ~~and who holds an accredited national certification in~~
21 ~~an advanced practice registered nurse psychiatric~~



1 ~~specialization,], is now in need of treatment in order~~
2 ~~to prevent a relapse or deterioration that would~~
3 ~~predictably result in the person becoming imminently~~
4 ~~dangerous to self or others, and the person's current~~
5 ~~mental status or the nature of the person's disorder~~
6 ~~limits or negates the person's ability to make an~~
7 ~~informed decision to voluntarily seek or comply with~~
8 ~~recommended treatment;~~

9 ~~[-(3) The person, at some time in the past: (A) has~~
10 ~~received inpatient hospital treatment for mental~~
11 ~~illness or substance abuse or (B) has been found to be~~
12 ~~imminently dangerous to self or others, as a result of~~
13 ~~mental illness or substance abuse;~~

14 ~~-(4) The person, based on the person's treatment history~~
15 ~~and current condition, is now in need of treatment in~~
16 ~~order to prevent a relapse or deterioration which~~
17 ~~would predictably result in the person becoming~~
18 ~~imminently dangerous to self or others;~~

19 ~~-(5) The person has a history of a lack of adherence to~~
20 ~~treatment for mental illness or substance abuse, and~~
21 ~~the person's current mental status or the nature of~~



1 ~~the person's disorder limits or negates the person's~~
2 ~~ability to make an informed decision to voluntarily~~
3 ~~seek or comply with recommended treatment;~~

4 ~~(6) The assisted community treatment is medically~~
5 ~~appropriate, and in the person's medical interests,~~
6 ~~and~~

7 ~~(7)]~~ (3) The person's mental illness has caused that
8 person to refuse needed and appropriate mental health
9 services in the community, and the person has a
10 history of lack of adherence to treatment for mental
11 illness or substance abuse, that resulted in the
12 person becoming dangerous to self or others, and that
13 now would predictably result in the person becoming
14 imminently dangerous to self or others; and

15 (4) Considering less intrusive alternatives, assisted
16 community treatment is essential to prevent the danger
17 posed by the person[-], is medically appropriate, and
18 is in the person's medical interests."

19 SECTION 7. Section 334-123, Hawaii Revised Statutes, is
20 amended by amending subsections (a) and (b) to read as follows:



1 "(a) Any interested party may file a petition with the
2 family court alleging that another person meets the criteria for
3 assisted community treatment. The petition shall state:

4 (1) Each of the criteria under section [~~334-121(1) through~~
5 ~~(7)~~] 334-121 for assisted community treatment;

6 (2) Petitioner's good faith belief that the subject of the
7 petition meets each of the criteria under section
8 [~~334-121(1) through (7)~~]; 334-121;

9 (3) Facts that support the petitioner's good faith belief
10 that the subject of the petition meets each of the
11 criteria under section [~~334-121(1) through (7)~~];
12 334-121; and

13 (4) That the subject of the petition is present within the
14 county where the petition is filed.

15 The hearing on the petition need not be limited to the
16 facts stated in the petition. The petition shall be executed
17 subject to the penalties of perjury[-] but need not be sworn to
18 before a notary public.

19 The attorney general, the attorney general's deputy,
20 special deputy, or appointee designated to present the case



1 shall assist the interested party to state the substance of the
2 petition in plain and simple language.

3 (b) The petition may be accompanied by a certificate of a
4 licensed psychiatrist or advanced practice registered nurse with
5 prescriptive authority and who holds an accredited national
6 certification in an advanced practice registered nurse
7 psychiatric specialization who has examined the subject of the
8 petition within [~~twenty~~] two calendar days prior to the filing
9 of the petition. For purposes of the petition, an examination
10 shall be considered valid so long as the licensed psychiatrist
11 or advanced practice registered nurse with prescriptive
12 authority and who holds an accredited national certification in
13 an advanced practice registered nurse psychiatric specialization
14 has obtained enough information from the subject of the petition
15 to reach a diagnosis of the subject of the petition, and to
16 express a professional opinion concerning the same, even if the
17 subject of the petition is not fully cooperative. If the
18 petitioner believes that further evaluation is necessary before
19 treatment, the petitioner may request further evaluation."

20 SECTION 8. Section 334-126, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§334-126 Hearing on petition. (a) The court shall
2 adjourn or continue a hearing for failure to timely notify a
3 person entitled to be notified unless the court determines that
4 the interests of justice require that the hearing continue
5 without adjournment or continuance.

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

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

15 (d) The hearing shall be closed to the public, unless the
16 subject of the petition requests otherwise. Individuals
17 entitled to notice are entitled to be present in the courtroom
18 for the hearing and to receive a copy of the hearing transcript
19 or recording, unless the court determines that the interests of
20 justice require otherwise.



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

6 (f) The attorney general, the attorney general's deputy,
7 special deputy, or appointee shall present the case; provided
8 that:

9 (1) The attorney general, the attorney general's deputy,
10 special deputy, or appointee need not participate in
11 or be present at a hearing whenever a petitioner or
12 some other appropriate person has retained private
13 counsel who will be present in court and will present
14 to the court the case for assisted community
15 treatment; and

16 (2) The attorney general, attorney general's deputy,
17 special deputy, or appointee need not present a case
18 the attorney general, attorney general's deputy,
19 special deputy, or appointee has determined to lack
20 merit.



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

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

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



1 ~~(h)~~ (i) No subject of the petition shall be ordered to
2 receive assisted community treatment unless at least one
3 psychiatrist or advanced practice registered nurse with
4 prescriptive authority and who holds an accredited national
5 certification in an advanced practice registered nurse
6 psychiatric specialization testifies in person at the hearing
7 who has personally assessed the subject, within a reasonable
8 time before the filing of the petition up to the time when the
9 psychiatrist or advanced practice registered nurse with
10 prescriptive authority and who holds an accredited national
11 certification in an advanced practice registered nurse
12 psychiatric specialization provides oral testimony at court.
13 The testimony of the psychiatrist or advanced practice
14 registered nurse with prescriptive authority and who holds an
15 accredited national certification in an advanced practice
16 registered nurse psychiatric specialization shall state the
17 facts which support the allegation that the subject meets all
18 the criteria for assisted community treatment, provide a written
19 treatment plan, which shall include non-mental health treatment
20 if appropriate, provide the rationale for the recommended



1 treatment, and identify the designated mental health program
2 responsible for the coordination of care.

3 If the recommended assisted community treatment includes
4 medication, the testimony of the psychiatrist or advanced
5 practice registered nurse with prescriptive authority and who
6 holds an accredited national certification in an advanced
7 practice registered nurse psychiatric specialization shall
8 describe the types or classes of medication which should be
9 authorized, and describe the physical and mental beneficial and
10 detrimental effects of such medication.

11 ~~[(i)]~~ (j) The subject of the petition may secure a
12 psychiatric examination and present the findings as evidence at
13 the hearing. The subject shall be entitled to a psychiatric
14 examination at a community mental health center if the subject
15 so desires, and if an examination has not already been conducted
16 at a community mental health center which will lead to
17 psychiatric testimony at the hearing."

18 SECTION 9. Section 334-127, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) If after hearing all relevant evidence, including the
21 results of any diagnostic examination ordered by the family



1 court, the family court finds that the criteria for assisted
2 community treatment under section 334-121(1) have been met
3 beyond a reasonable doubt and that the criteria under section
4 334-121(2) to [~~334-121(7)~~] 334-121(4) have been met by clear and
5 convincing evidence, the family court shall order the subject to
6 obtain assisted community treatment for a period of no more than
7 one year. The written treatment plan submitted pursuant to
8 section [~~334-126(h)~~] 334-126(i) shall be attached to the order
9 and made a part of the order.

10 If the family court finds by clear and convincing evidence
11 that the beneficial mental and physical effects of recommended
12 medication outweigh the detrimental mental and physical effects,
13 if any, the order may authorize types or classes of medication
14 to be included in treatment at the discretion of the treating
15 psychiatrist or advanced practice registered nurse with
16 prescriptive authority and who holds an accredited national
17 certification in an advanced practice registered nurse
18 psychiatric specialization.

19 The court order shall also state who should receive notice
20 of intent to discharge early in the event that the treating
21 psychiatrist or advanced practice registered nurse with



1 prescriptive authority and who holds an accredited national
2 certification in an advanced practice registered nurse
3 psychiatric specialization determines, prior to the end of the
4 court ordered period of treatment, that the subject should be
5 discharged early from assisted community treatment.

6 Notice of the order shall be provided to those persons
7 entitled to notice pursuant to section 334-125."

8 SECTION 10. Section 334-129, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) A treating psychiatrist or advanced practice
11 registered nurse with prescriptive authority and who holds an
12 accredited national certification in an advanced practice
13 registered nurse psychiatric specialization may prescribe or
14 administer to the subject of the order reasonable and
15 appropriate medication or medications, if specifically
16 authorized by the court order, and treatment that is consistent
17 with accepted medical standards and the family court order,
18 including the written treatment plan submitted pursuant to
19 section [~~334-126(h)~~]. 334-126(i)."

20 SECTION 11. Section 802-1, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) Except as provided in section [~~334-126(f)~~], 334-
2 126(g), the appearance of the public defender in all judicial
3 proceedings shall be subject to court approval."

4 SECTION 12. Section 802-5, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Except as provided in section [~~334-126(f)~~], 334-
7 126(g) when it shall appear to a judge that a person requesting
8 the appointment of counsel satisfies the requirements of this
9 chapter, the judge shall appoint counsel to represent the person
10 at all stages of the proceedings, including appeal, if any. If
11 conflicting interests exist, or if the interests of justice
12 require, the court may appoint private counsel, who shall
13 receive reasonable compensation for necessary expenses,
14 including travel, the amount of which shall be determined by the
15 court, and reasonable fees pursuant to subsection (b). All
16 expenses and fees shall be ordered by the court. Duly ordered
17 payment shall be made upon vouchers approved by the director of
18 finance and warrants drawn by the comptroller."

19 SECTION 13. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ or so much
21 thereof as may be necessary for fiscal year 2019-2020 and the



1 sum of \$ or so much thereof as may be necessary for
2 fiscal year 2020-2021 for the establishment and appointment of
3 two deputy attorneys general and support staff to assist with
4 petitions for assisted community treatment.

5 The sums appropriated shall be expended by the department
6 of the attorney general for the purposes of this Act.

7 SECTION 14. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 15. This Act shall take effect on March 15, 2050.



Report Title:

Mental Health; Petitions; Procedures; Appropriation

Description:

Requires the administrator or attending physician to assess whether an assisted community treatment plan is indicated and to make certain arrangements if so indicated. Specifies the role of the AG for petitions of involuntary hospitalizations and assisted community treatments. Amends the criteria for assisted community treatment. Makes conforming amendments. Appropriates funds. (SB1124 HD1)

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