



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony in SUPPORT of (HB 0665 HD 1)
RELATING TO THE ELECTRONIC PRESCRIPTION ACCOUNTABILITY SYSTEM

REPRESENTATIVE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY

REPRESENTATIVE ROY M. TAKUMI, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hearing Date: February 21, 2019

Room Number: 325

1 **Fiscal Implications:** None

2 **Department Testimony:** The Department of Health (DOH) defers to the Department of Public
3 Safety on the regulation and implementation of the proposed amendments to the Hawaii Uniform
4 Controlled Substances Act, and supports this bill to exempt licensed health care providers from
5 consulting the electronic prescription accountability system also known as the Prescription Drug
6 Monitoring Program (PDMP) of the Department of Public Safety (PSD) when the patient is in an
7 inpatient or hospital setting, or in hospice care. The DOH also supports the proposed exemption
8 to not require an informed consent agreement for patients who are administered controlled
9 substances under the supervision of a health care provider.

10 This measure aligns with the following prescriber education and pain management
11 practice objectives of the Hawaii Opioid Action Plan (January 2019) that was developed by the
12 Hawaii Opioid Initiative:

- 13 • In-Progress Objective 2-3a: “By December 2019, develop a standardized training on
14 opioid-prescribing best practices and provide training to 50% of prescribers
15 Statewide;” and

- 1 • New Objective 2-2: “By December 2019, develop and recommend a plan for
2 education for physicians specific to opioid prescribing and pain management
3 practices that includes oversight to ensure that content remains relevant and current.”

4 The DOH supports a balanced implementation of this measure. The proposed exemptions
5 promote both balance and faster relief for patients who are hospitalized or in hospice. Both
6 exemptions also do not impact the PDMP whose purpose is to collect data on prescriptions
7 dispensed in outpatient settings like doctor’s offices or local pharmacies.

8 Thank you for the opportunity to provide testimony.



February 21, 2019 at 2:00 pm
Conference Room 325

House Committee on Judiciary
House Committee on Consumer Protection and Commerce

To: Chair Chris Lee
Vice Chair Joy A. San Buenaventura

Chair Roy M. Takumi
Vice Chair Linda Ichiyama

From: Paige Heckathorn Choy
Director of Government Affairs
Healthcare Association of Hawaii

Re: Testimony in Support
HB 665 HD 1, Relating to the Electronic Prescription Accountability System

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the healthcare continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

Thank you for the opportunity to testify in **support** of HB 665 HD 1. In the 2018 legislative session, the legislature passed Act 153, which requires all prescribers who prescribe a Schedule II, III, or IV controlled substance to check the state's electronic prescription accountability system (better known as the Prescription Drug Monitoring Program, or PDMP), in order to reduce the risk of abuse of or addiction to a controlled substance, as needed to avoid harmful drug interactions, or as otherwise medically necessary. This legislation was passed amidst a national opioid crisis that is requiring lawmakers, providers, and the community to find ways to address access to these potentially dangerous drugs.

The Association's members have taken the charge of Act 153 seriously and have been working diligently to comply with the law. Indeed, many facilities are trying to find ways to make checking the PDMP as seamless as possible to ensure the highest level of patient care. However, in implementing the law, there were some areas highlighted as needing clarification to reflect actual clinical practice and workflow.

We are supportive of this legislation, in particular the sections that provide:

- Clarification that providers do not have to check the PDMP when a patient is receiving a drug directly under the supervision of a healthcare professional;
- An exemption for prescriptions written for hospice patients, which can create a barrier to appropriate end-of-life care; and
- Clarification on when an opioid therapy patient must complete informed consent to ensure that incapacitated patients in the hospital are not subject to this requirement.


We will continue to work with our members to ensure the safety of our communities. Thank you for the opportunity to provide comments in support of clarifications to this important law.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members, Committee on Judiciary

The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
Members, Committee on Consumer Protection and Commerce

From:  Paula Yoshioka, Vice President, Government Relations and External Affairs, The Queen's Health Systems

Date: February 19, 2019

Hrg: House Committee on Judiciary and Committee on Consumer Protection and Commerce
Joint Hearing; Thursday, February 21, 2019 at 2:00PM in Room 325

Re: Support for H.B. 665, H.D. 1 Relating to the Electronic Prescription Accountability System

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to provide testimony in support of H.B. 665, H.D. 1 relating to the electronic prescription accountability system. The measure clarifies that a health care provider does not need to consult the electronic prescription accountability system when a patient is in an inpatient setting or in hospice care. It also specifies that an informed consent agreement is not required for patients whose prescription will be directly administered under supervision of a health care provider. We also concur with the testimony submitted by the Healthcare Association of Hawaii.

Since the passage of Act 153, Queen's has dedicated resources to be in compliance and ensure that the state's electronic prescription accountability system is consulted, in order to reduce the potential risk of abuse or addiction to a controlled substance, as needed to avoid harmful drug interactions, or as otherwise medically necessary. Thank you for your time and attention to this important issue.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

HB-665-HD-1

Submitted on: 2/20/2019 8:20:57 AM

Testimony for JUD on 2/21/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Rosen, M.D., M.P.H.	Hawaii Health Systems Corporation	Support	Yes

Comments:

We support this measure which clarifies important legislation from last year.

Testimony of
Jonathan Ching
Government Relations Specialist

Before:
House Committee on Judiciary
The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair

House Committee on Consumer Protection & Commerce
The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair

February 21, 2019
2:00 p.m.
Conference Room 325

Re: HB665 HD1, Relating to the Electronic Prescription Accountability System

Chair Lee, Chair Takumi, and committee members, thank you for this opportunity to provide testimony on HB665 HD1, which specifies that a health care provider shall not be required to consult the electronic prescription accountability system for patients in certain instances and clarifies that an informed consent agreement is not necessary for patients whose prescription will be directly administered under the supervision of a health care provider.

Kaiser Permanente Hawai'i SUPPORTS HB665 HD1 with AMENDMENTS

Kaiser Permanente Hawai'i is the state's largest integrated health system that provides care and coverage for 255,000 members. Each day, over 4,500 dedicated employees and more than 600 Hawai'i Permanente Medical Group physicians come to work to care for our members at Moanalua Medical Center and 27 other clinic locations, providing high-quality care and delivering on our commitment to improve the health of the 1.4 million people in the communities we serve.

HB665 HD1 clarifies when a health care provider is required to consult the electronic prescription accountability system. In 2018, the Legislature passed Act 153, Session Laws Hawai'i, to require that prescribers of controlled substances check the electronic prescription accountability system, known as the prescription drug monitoring program (PDMP), prior to prescribing certain controlled substances.

While Kaiser Permanente Hawai'i generally supports prescribers checking the PDMP, we would like to offer a proposed amendment to more narrowly define the procedure for initial prescriptions in post-operative situations.

According to the Centers for Disease Control and Prevention recommendations on acute pain management, three days can significantly help patients,¹ and many situations can be effectively managed within this limited prescription.² There is also evidence demonstrating that the probability of continued use by opioid-naïve patients is greatest after the 5th and 31st days³.

Therefore, Kaiser Permanente Hawai'i believes that providing a limited post-operation exception with a short duration will efficiently support patient care at a time when patients are most in need of pain management. Furthermore, there are other long-term advantages of a narrow and appropriately defined exception. We believe that such a process would promote prescribing practices that are consistent with clinical evidence and recommendations, reduce over-prescribing behavior, create consistency amongst providers, and reduce the likelihood of doctor shopping.

We have attached draft language for the proposed amendment to this testimony. Mahalo for the opportunity to testify on this important measure.

¹ Dowell D, Haegerich TM, Chou R. CDC Guideline for Prescribing Opioids for Chronic Pain—United States, 2016. *Jama* [Internet]. 2016;315(15):1624. Available from: https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1.htm?s_cid=rr6501e1_w.
Erratum in: *MMWR CDC Morbidity and Mortality Weekly Report* [Internet]. 2016 March 25; 65(11):295. Available from: https://www.cdc.gov/mmwr/volumes/65/wr/mm6511a6.htm?s_cid=mm6511a6_w.htm#suggestedcitation

See also CDC 7-2017 Vital Signs- Prescriber Fact Sheet Opioids- Problem & Solutions [Internet]. Atlanta [GA]: Centers for Disease Control and Prevention; [updated 2017 September 26]. Available from: <https://www.cdc.gov/vitalsigns/pdf/2017-07-vitalsigns.pdf>

² Prescribing Opioids for Postoperative Pain [Internet]. Seattle [WA]: Dr. Robert Bree Collaborative; [updated 2018 July 17]. Available from: <http://www.breecollaborative.org/wp-content/uploads/Supplemental-Bree-AMDG-Postop-pain-18-0718.pdf>

³ Shah A, Hayes CJ, Martin BC. Characteristics of Initial Prescription Episodes and Likelihood of Long-Term Opioid Use — United States, 2006–2015. *MMWR Morbidity and Mortality Weekly Report* [Internet]. 2017;66(10):265–9. Available from: <https://www.cdc.gov/mmwr/volumes/66/wr/mm6610a1.htm>

THE HOUSE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

H.B. NO. 665
H.D. 2

PROPOSED

A BILL FOR AN ACT

RELATING TO THE ELECTRONIC PRESCRIPTION ACCOUNTABILITY SYSTEM.

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

1 SECTION 1. The legislature finds that Act 153,
2 Session Laws Hawaii 2018, requires all prescribers of controlled
3 substances to query the electronic prescription accountability
4 system, prior to issuing a prescription for certain controlled
5 substances, to reduce the risk of abuse of or addiction to a
6 controlled substance. The electronic prescription
7 accountability system, also known as the prescription drug
8 monitoring program, is a useful tool for health care providers
9 when determining which controlled substances a patient has been
10 prescribed.

11 The legislature notes that although prescribers have taken
12 steps to implement this law, some concerns have been raised
13 about the applicability of the law to certain patient
14 populations. The legislature further finds that the law should
15 not apply in inpatient settings, where a patient is in a

1 hospital or nursing home and is directly administered a
2 prescription under the supervision of a health care provider.
3 Second, the law should not apply to initial prescriptions for
4 patients being treated for post-operative pain with a limited
5 three-day supply, given that this is consistent with a 2016
6 Centers for Disease Control and Prevention recommendation on
7 acute pain management. [~~An~~] Finally, an exemption for hospice
8 patients is also appropriate to reduce barriers to this end-of-
9 life choice. By definition, a patient electing hospice
10 typically has only six months or less to live. Therefore,
11 requiring a health care provider to consult the electronic
12 prescription accountability system under these circumstances may
13 cause a delay in the provision of appropriate care to the
14 patient.

15 The legislature additionally finds that existing law
16 requires prescribing health care providers to adopt and maintain
17 informed consent policies for opioid therapy patients.
18 Providers have since adopted these policies; however, concerns
19 have been raised about requiring a patient to complete the
20 informed consent process in certain situations, such as where
21 the patient is in intensive care, is being monitored, or
22 otherwise lacks the capacity to provide consent.

1 The purpose of this Act is to:

2 (1) Specify that a health care provider shall not be
3 required to consult the electronic prescription accountability
4 system when a patient is in an inpatient setting, in post-
5 operative care, or in hospice care; and

6 (2) Clarify that an informed consent agreement is not
7 required for patients whose prescription will be directly
8 administered under the supervision of a health care provider.

9 SECTION 2. Section 329-38.2 Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) No prescriber shall prescribe a schedule II, III, or
12 IV controlled substance without first requesting, receiving, and
13 considering records of the ultimate user from the state
14 electronic prescription accountability system as needed to
15 reduce the risk of abuse of or addiction to a controlled
16 substance, as needed to avoid harmful drug interactions, or as
17 otherwise medically necessary; provided that this subsection
18 shall not apply to[+] any prescription:

19 (1) [~~Any prescription for~~] For a supply of three days or
20 less that is made in an emergency situation, by an emergency
21 medical provider, or in an emergency room; [~~and~~]

1 (2) ~~[Any prescription written]~~ That will be administered
2 directly to a patient under the supervision of a health care
3 provider licensed to practice within the State;

4 (3) That is an initial prescription for a patient being
5 treated for post-operative pain; provided that the prescription
6 be limited to a three-day supply with no refills;

7 (3) (4) For a patient receiving hospice care; or

8 (4) (5) Written while the state electronic prescription
9 accountability system is nonfunctional."

10 SECTION 3. Section 329-38.5, Hawaii Revised Statutes, is
11 amended by amending subsection (c) to read as follows:

12 "(c) For the purposes of this section, "qualifying opioid
13 therapy patient" means:

14 (1) A patient requiring opioid treatment for more than
15 three months;

16 (2) A patient who is prescribed benzodiazepines and
17 opioids together; or

18 (3) A patient who is prescribed a dose of opioids that
19 exceeds ninety morphine equivalent doses.

20 This term shall not apply to an individual who is receiving
21 treatment at a hospital under the supervision of a licensed

1 health care provider and who lacks capacity as defined in
2 section 327E-2."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

Report Title:

Electronic Prescription Accountability System; Hospice; Opioid Therapy; Informed Consent Process

Description:

Specifies that a health care provider shall not be required to consult the electronic prescription accountability system for patients when the prescription will be directly administered under the supervision of a health care provider, for patients in post-operative care with a prescription limited to a three-day supply, or for patients who qualify for hospice care. Clarifies that an informed consent agreement is not necessary for patients whose prescription will be directly administered under the supervision of a health care provider. (HD2 PROPOSED)

LATE

**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE REGARDING H.B. 665 HD1**

Thursday, Feb. 21, 2019
2:00 pm, Room 325

To: Chair Chris Lee and Chair Roy M. Takumi and Members of the House Committees on Judiciary and Consumer Protection and Commerce.

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) with **comments** regarding **H.B. 665 HD1**, Relating to the Electronic Prescription Accountability System.

The purpose of informed consent is to disclose to the patient what the risks are, as well as the benefits, of medical treatments or procedures. This bill is overly broad by allowing a health care provider to bypass consulting the electronic prescription accountability system. In addition, this bill would remove the need for informed consent when a patient undergoing opioid treatment therapy is incapacitated.

Hawaii courts support the “patient-oriented” standard of informed consent in cases as recently as 2015, in Ngo v. Queens. This has also been codified in HRS §671-3 which allows the Hawaii medical board to establish standards for health care providers to follow when giving information to a patient if they lack capacity. Therefore, as there is an existing process to address informed consent for a person who is incapacitated, it is unclear why the language on page 4, lines 16-19 is necessary.

We believe it is an important part of medical treatment to be informed about the medication you are about to take and to agree to it, whether you are under the direct supervision of a health care provider or not, and if incapacitated, it is important for the Hawaii medical board to be the ones to establish the appropriate criteria by which you would address informed consent.

Thank you for the opportunity to testify on this matter.