



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 1661, H.D. 3, RELATING TO HEALTH.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Tuesday, March 10, 2020

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Erin K.S. Torres, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments on this bill.

This bill clarifies the process for emergency examination and emergency hospitalization in the context of mental health crisis intervention.

There are references to "MH-1" in section 1 on page 1, line 10, and on page 2, line 6. However, "MH-1" is a term that is not currently defined in the statute. Therefore, the Department recommends that instead of references to the term "MH-1", the wording in section 1 should refer to section 334-59(a), Hawaii Revised Statutes (HRS), setting forth the process for emergency admissions. Therefore, section 1, page 1, lines 9 to 10, should be amended to read as follows:

. . . disposition once an individual has been taken into custody pursuant to section 334-59(a), Hawaii Revised Statutes.

Also, section 1, page 2, lines 5 to 6, should be amended to read as follows:

. . . an emergency room or behavioral health crisis center pursuant to section 334-59(a), Hawaii Revised Statutes, for evaluation and the disposition of the individual. . .

The Department also recommends an amendment to section 2, page 2, lines 10 to 16, of this measure, which allows for emergency examinations to take place at a

“psychiatric facility” or a “behavioral health crisis center”. “Psychiatric facility” is a term that is defined in section 334-1, HRS, setting forth the definitions of terms used throughout chapter 334, HRS, but “behavioral health crisis center” is not. For the sake of clarity and consistency, section 334-1, HRS, should be amended by adding a definition of “behavioral health crisis center” to read as follows:

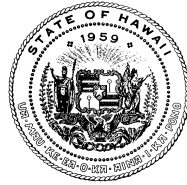
“Behavioral health crisis center” means a facility that is specifically designed and staffed to provide care, diagnosis, or treatment for persons who are experiencing a mental illness or substance use disorder crisis.

A separate definition of “behavioral health crisis center” would then be unnecessary in section 2, page 2, lines 10 to 16, which should be amended to read as follows:

“(b) Emergency examination. A patient who is delivered for emergency examination and treatment to a psychiatric facility [~~designated by the director~~] or a behavioral health crisis center shall be [~~examined~~] provided an examination, which shall include a. . .

Finally, section 2 of the bill refers to “psychiatric facility” on page 2, lines 11 to 12, and on page 5, line 8. However, section 2, page 6, line 13, refers to a “*licensed* psychiatric facility”. (Emphasis added.) For the sake of consistency, the Department recommends that the word “licensed” be removed in section 2, page 6, line 13.

If the Committee chooses to pass this measure, we respectfully ask that it make the amendments suggested by the Department.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of H.B. 1661 H.D. 3
RELATING TO HEALTH**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH

Hearing Date and Time: Tuesday, March 10, 2020 at 9:30 a.m.

Room: 229

1 **Department Position:** The Department of Health (“Department”) strongly supports this
2 measure offering comments and proposed amendments.

3 **Department Testimony:** The subject matter of this measure intersects with the scope of the
4 Department’s Behavioral Health Administration (BHA) whose statutory mandate is to assure a
5 comprehensive statewide behavioral health care system by leveraging and coordinating public,
6 private and community resources. Through the BHA, the Department is committed to carrying
7 out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and
8 person-centered. The BHA’s Adult Mental Health Division (AMHD) provides the following
9 testimony on behalf of the Department.

10 The Department is committed to addressing the needs of individuals who live with
11 behavioral health issues and are in need of services when there is a danger to self or others.
12 This commitment includes implementing a statewide mental health emergency worker
13 (MHEW) system, conducting emergency examinations, coordinating emergency admissions,
14 and, where appropriate, pursuing involuntary commitment.

15 We acknowledge that active and decisive steps must be taken to better operationalize
16 the emergency examination and hospitalization process so that individuals may be better
17 assisted and to better protect the safety of the public. There are several very significant efforts

1 underway by the department, and for which we gratefully have broad legislative support, that
2 will the achieve the level of balanced implementation we seek.

3 The Department continues to collaborate with state agency partners through the task
4 force and working group of Act 90 and Act 263, Session Laws of Hawaii 2019 and specifically
5 with the MH-1 work group. For reference, the definition of an MH-1 is generally understood to
6 mean a mental health emergency worker authorized involuntary transport, pursuant to section
7 334-59(a)(1), of a person in crisis by either law enforcement and/or emergency medical services
8 personnel to receive an emergency examination and possible emergency hospitalization.

9 We are aware of and agree with the amendments proposed in the Department of
10 Attorney General's (ATG) testimony. Additionally, in collaboration with the mental health task
11 force's MH-1 work group, the attached proposed S.D. 1 was developed. We believe this
12 measure, with the amendments in the attached proposed S.D. 1, and amendments proposed
13 by the ATG, further enhance the current efforts of the Department and its stakeholder partners
14 and maintains alignment with the mental health task force report.

15 The Department thanks the Legislature for its support of developing more appropriate
16 and effective pathways for this population.

17 **Offered Amendments:** The Department respectfully offers the attached proposed S.D. 1.

18 Thank you for the opportunity to testify.

19 **Fiscal Implications:** Undetermined.

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 a comprehensive
2 mental health response crisis system is needed to serve the dual
3 purposes of supporting individuals suffering from a behavioral
4 health crisis and maintaining public safety. The legislature
5 further finds that the mental health crisis response system has
6 multiple steps for mental health crisis intervention, including
7 initial contact by first responders, determining need and basis
8 for involuntary transport for evaluation, and determination for
9 disposition once an individual has been taken into custody under
10 an MH-1.

11 The legislature further finds that the department of
12 health, along with a wide range of stakeholder partners,
13 including the legislature, has been actively evaluating and
14 restructuring the mental health crisis response system through
15 the task force and working group established by Act 90 and Act
16 263, Session Laws of Hawaii 2019.

17 The purpose of this Act is to support the efforts of the
18 mental health task force and working group by amending chapter
19 334, Hawaii Revised Statutes, to further define and guide the

1 process that occurs when an individual has been transported to
2 an emergency room or behavioral health crisis center under an
3 MH-1 order for evaluation and the disposition of the individual
4 once the evaluation has been completed.

5 SECTION 2. Section 334-59, Hawaii Revised Statutes, is
6 amended by amending subsections (b) to (e) to read as follows:

7 "(b) Emergency examination. A patient who is delivered
8 for emergency examination and treatment to
9 a psychiatric facility [~~designated by the director~~] or a
10 behavioral health crisis center specifically designed and
11 staffed to provide care, diagnosis, or treatment for persons who
12 are experiencing a mental illness or substance use disorder
13 crisis shall be [~~examined~~] provided an examination, which shall
14 include a screening to determine whether the criteria for
15 involuntary hospitalization listed in section 334-60.2
16 persists, by a licensed physician, medical resident under the
17 supervision of a licensed physician, or advanced practice
18 registered nurse without unnecessary delay, and [~~may~~] shall be
19 [~~given~~] provided such treatment as is indicated by good
20 medical ~~mental health~~ practice. [A] If, after the examination,
21 screening, and treatment, the licensed physician, medical
22 resident under the supervision of a licensed physician, or
23 advanced practice registered nurse determines that the
24 involuntary hospitalization criteria persist, then

1 a psychiatrist, a psychologist, or an advanced practice
2 registered nurse [~~, or psychologist may~~] who has prescriptive
3 authority and who holds an accredited national certification in
4 an advanced practice registered nurse psychiatric
5 specialization, shall further examine the patient to diagnose
6 the presence or absence of a mental illness or substance
7 use disorder, further assess the risk that the patient may be
8 dangerous to self or others, and assess whether or not the
9 patient needs to be hospitalized. If it is determined that
10 hospitalization is not needed, an examination pursuant to
11 section 334-121.5 shall be completed.

12 (c) Release from emergency examination. If, after
13 examination, the licensed physician [~~or~~], psychiatrist,
14 or advanced practice registered nurse [~~who performs the~~
15 ~~emergency examination, in consultation with a psychologist if~~
16 ~~applicable, concludes~~] with prescriptive authority and who holds
17 an accredited national certification in an advanced practice
18 registered nurse psychiatric specialization determines that [~~the~~
19 ~~patient need not be hospitalized,~~] the involuntary
20 hospitalization criteria set forth in section 334-60.2 are not
21 met or do not persist and the examination pursuant to section
22 334-121.5, where required, has been completed, the patient shall
23 be discharged [~~immediately~~] expediently unless the patient is

1 under criminal charges, in which case the patient shall be
2 returned to the custody of a law enforcement officer.

3 (d) Emergency hospitalization. If the
4 [~~physician,~~] psychiatrist, psychologist, or advanced practice
5 registered nurse[~~, or psychologist~~] with prescriptive authority
6 and who holds an accredited national certification in an
7 advanced practice registered nurse psychiatric
8 specialization who performs the emergency examination has reason
9 to believe that the patient is:

- 10 (1) Mentally ill or suffering from substance abuse;
11 (2) Imminently dangerous to self or others; and
12 (3) In need of care or treatment, or both;

13 the [~~physician,~~] psychiatrist, psychologist, or advanced
14 practice registered nurse[~~, or psychologist may~~] with
15 prescriptive authority and who holds an accredited national
16 certification in an advanced practice registered nurse
17 psychiatric specialization shall direct that the patient be
18 hospitalized on an emergency basis or cause the patient to be
19 transferred to another psychiatric facility for emergency
20 hospitalization, or both. The patient shall have the right
21 immediately upon admission to telephone the patient's guardian
22 or a family member including a reciprocal beneficiary, or an
23 adult friend and an attorney. If the patient declines to

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

10 (e) Release from emergency hospitalization. If at any
11 time during the period of emergency hospitalization the
12 [~~responsible~~] treating physician [~~concludes~~] determines that the
13 patient no longer meets the criteria for emergency
14 hospitalization and the examination pursuant to section
15 334-121.5 has been completed, the physician
16 shall expediently discharge the patient. If the patient is
17 under criminal charges, the patient shall be returned to the
18 custody of a law enforcement officer. In any event, the patient
19 [~~must~~] shall be released within forty-eight hours of the
20 patient's admission to a licensed psychiatric facility, unless
21 the patient voluntarily agrees to further hospitalization, or a
22 proceeding for court-ordered evaluation or hospitalization, or
23 both, is initiated as provided in section 334-60.3. If that
24 time expires on a Saturday, Sunday, or holiday, the time for

1 initiation is extended to the close of the next court day. Upon
2 initiation of the proceedings, the facility shall be authorized
3 to detain the patient until further order of the court."

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

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

9 SECTION 5. This Act shall take effect on July 1, 2050.
10
11

12 INTRODUCED BY: _____

Report Title:

Emergency Examinations; Emergency Hospitalizations; Behavioral Health Crisis

Description:

Amends criteria for emergency examination, release from emergency examination, emergency hospitalization, and release from emergency hospitalization for individuals suffering from a behavioral health crisis. Effective 7/1/2050. (HD3)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

HB-1661-HD-3

Submitted on: 3/6/2020 6:44:02 PM

Testimony for CPH on 3/10/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Comments	Yes

Comments:

We generally have a favorable impression of the bill. We like the idea of the option to transport a patient to a behavioral health crisis center and we believe that the screening process set forth will enable certain individuals to receive mental health treatment. We have some questions about expanding the ability to conduct the examination to medical residents but we assume that we will receive information to address that.



HAWAII SUBSTANCE ABUSE COALITION

HB1661 HD3 Refer MH-1 to Behavioral Health

COMMITTEE ON CONSUMER PROTECTION AND HEALTH:

- Sen. Rosalyn Baker, Chair; Sen. Stanley Chang, Vice Chair
- Tuesday, March 10, 2020: 9:30 am
- Conference Room 229

Hawaii Substance Abuse Coalition Supports HB1661 HD3:

ALOHA 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 over 30 alcohol and drug treatment and prevention agencies.

HSAC supports new language:

1. **The intent is to help and protect persons who are suffering** from mental illness or substance use disorders as well as others who may be harmed.
2. **People who are high utilizers and refuse to take needed medication are excessive in their use of emergency rooms, police interventions, emergency workers, and jails** while often not engaging access to adequate mental health treatment or substance use e disorder treatment. What they get is inadequate care over and over again.
PBS/NPR: WHY?; Anne Hoffman (2017): High Utilizers tax state mental health services, but still don't get adequate care. <https://why.org/articles/high-utilizers-tax-state-mental-health-services-but-still-dont-get-adequate-care/>
3. **We are broadening our definition to allow systems more options to encourage and engage services.** If persons have historically demonstrated dangerous harm to selves and others while continuing to refuse medications then it is probable that they will continue to do so until they receive the necessary community-based services that could help them.
4. **The need for follow up services is great.** Homeless people, who have chronic conditions of mental illness, substance use disorders or both, have disproportionately high rates of chronic and acute health conditions, traumatic injuries as well as assaults.
5. **Without interventions, high utilizers will continue to overuse emergent care.** They are basically overusing emergent care thus competing priorities for needed services when they have potentially preventable deteriorations in health conditions. They tend to have a predisposing propensity to use emergent services; enabling factors such as personal connections and community resources that direct them to use emergent care; and need factors that would require frequent emergent care.
National Center for Biotechnology Information: PubMed Central: U.S. National Library of Medicine: National Institutes of Health: High Utilizers of Emergency Health Services in Population-Based Cohort of Homeless Adults: Am J Public Health, (2013): <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3969147/>
6. **Effective healthcare system transformation requires developing effective high utilizers' strategies.** High utilizers are reported to be 5% of the population yet account for up to 50% of healthcare expenditures. The high medical costs of recurring inpatient or emergency department visits is generally regarded as preventable.

System transformation requires fundamental changes to produce high value care with improved outcomes at lower costs. As a community, we are wisely moving towards developing more community-based resources with higher quality treatments to improve coordinated care that would work towards reducing ER visits, incarceration, and the over utilization of police and emergency services.

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

HB-1661-HD-3

Submitted on: 3/8/2020 5:28:21 PM

Testimony for CPH on 3/10/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Katrina Obleada	Testifying for Hawaii Psychological Association	Support	No

Comments:

Testimony of
Jonathan Ching
Government Relations Manager

Before:
Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair

March 10, 2020
9:30 a.m.
Conference Room 229

Re: HB1661, HD3, Relating to Health

Chair Baker, Vice Chair Chang, and committee members, thank you for this opportunity to provide testimony on HB1661, HD3, which amends the criteria for emergency examination, release from emergency examination, emergency hospitalization, and release from emergency hospitalization for individuals suffering from a behavioral health crisis.

Kaiser Permanente Hawai‘i SUPPORTS HB1661 HD3.

While we generally concur with the amendments being offered by the Department of Health via the Proposed SD1, **we request the word “licensed” on page 6, line 13 remain** in the bill to be explicitly clear that the time clock for admission starts at the time of actual admission to the licensed facility. This is consistent with other references to “licensed psychiatric facility” in Hawai‘i Revised Statutes § 334-59.

This clarification was based on discussion with the Department, in collaboration with state agency partners through the task force and working group of Act 90 and Act 263, Session Laws of Hawaii 2019; specifically the MH-1 and MH-4 working groups, where there was robust discussion about the ambiguity in practice on when a 48-hour involuntary hold begins.

Thank you for the opportunity to provide testimony on this important measure.