

Testimony of the Hawaii Medical Board

**Before the
House Committee on Health, Human Services, & Homelessness
Thursday, February 4, 2021
9:00 a.m.
Via Videoconference**

**On the following measure:
H.B. 138, RELATING TO MEDICAL INFORMED CONSENT**

WRITTEN TESTIMONY ONLY

Chair Yamane and Members of the Committee:

My name is Ahlani Quiogue, and I am the Executive Officer of the Hawaii Medical Board (Board). The Board offers comments on this bill.

The purposes of this bill are to: (1) require the Board to establish standards for health care providers to ensure that a patient's consent to treatment is an informed consent; (2) require informed consent for a proposed medical or surgical treatment or a diagnostic or therapeutic procedure be obtained prior to the day of that treatment or procedure; (3) specify that if the treatment or procedure is to occur on the same day it is scheduled, the informed consent shall be obtained at the time the decision is made to schedule that treatment or procedure.

The Board will review this bill at its next publicly noticed meeting on February 11, 2021.

Thank you for the opportunity to testify on this bill.



February 4, 2021 at 9:00 am
Via Videoconference

House Committee on Health, Human Services, and Homelessness

To: Chair Ryan I. Yamane
Vice Chair Adrian K. Tam

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

Re: **Submitting Comments**
HB 138, Relating to Medical Informed Consent

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 health care 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 provide **comments** on this measure. Our members take patient safety and the provision of quality care extremely seriously and appreciate that this bill is attempting to ensure that individuals have the tools they need to make informed decision about their care. However, we would submit that existing state, federal and third-party standards on informed consent would make many of the requirements in this bill duplicative and not necessary. Further, informed consent must be obtained prior to treatment or services per Hawaii Administration Rules and the new statutory requirement seems unnecessary.

State requirements on informed consent are laid out in Hawaii Administrative Rules (§16-85-24 through §16-85-29). These rules stipulate the types of information that must be provided to a patient or their guardian **prior to** a proposed medical or surgical treatment. This includes the condition, the proposed treatment or procedure, the anticipated result, other alternatives, and a description of risks and benefits. This information must be disclosed in writing, orally, or by means of audio-visual aids. The information must be presented in a language that the patient or their guardian should be able to understand.

There are further requirements for informed consent at the federal level. According to conditions of participation for the Centers for Medicare and Medicaid Services, each patient has the right to make an informed decision on his or her care. Properly executed informed consent

forms must be logged into a patient's chart prior to the provision of services, noting that not only was the process completed, but that there is a record of it.

Lastly, third-party requirements, such as those promulgated by The Joint Commission, require that hospitals have and follow a written policy on informed consent that describes the specific care or treatment that requires consent, the process used to obtain informed consent, and how that consent will be documented. There are also extensive requirements on what must be discussed as part of informed consent, including the proposed treatment or services, the potential benefits, risks, and side effects, and the reasonable alternatives. The hospital must also respect any decision made by the patient or their guardian.

Considering the extensive state, federal, and third-party requirements on informed consent, we would suggest that the requirements in this legislation would be duplicative.

Thank you for your consideration of our testimony.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Ryan I. Yamane, Chair
The Honorable Adrian K. Tam, Vice Chair
Members, House Committee on Health, Human Services, & Homelessness

From: Colette Masunaga, Director, Government Relations & External Affairs, The Queen's Health Systems

Date: February 4, 2021

Re: Comments for HB138: Relating to Medical Informed Consent

The Queen's Health Systems (Queen's) is a nonprofit 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, and more than 1,500 affiliated physicians and providers 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 comments regarding HB138, relating to medical informed consent. We concur with the testimony provided by the Hospital Association of Hawaii and draw the Committee's attention to existing state, federal, and professional third-party requirements which currently govern patient consent to treatment.

Thank you for allowing Queen's to provide testimony on HB138.

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.