

STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony COMMENTING on H.B. 597
RELATING TO HEALTH**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

Hearing Date, Time and Room Number: Friday, February 10, 2023 at 10 a.m. in Rm. 329/VIDEO

1 **Fiscal Implications:** The Department of Health (“Department”) requests that this measure be
2 considered as a vehicle to provide this needed funding so long as it does not supplant the
3 priorities and requests outlined in the Governors executive budget request.

4 **Department Position:** The Department appreciates the intent of this measure, offers
5 comments, and proposes amendments.

6 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following
7 testimony on behalf of the Department.

8 The Department is committed to addressing the needs of individuals who live with
9 behavioral health challenges and need necessary medical treatment when it is in their best
10 interest. Methods to establish authorization to treat are important to ensure the application of
11 those services to those who would benefit from treatment over their objection. The
12 Department supports the availability and effectiveness of court and administrative procedures
13 to obtain authorization to treat over objection, including working with state agencies, the
14 Judiciary, and community partners to improve access and implementation.

15 We support expedited processes for obtaining authorization and reducing the time to
16 initiate treatment, including submitting a petition for authorization to treat concurrently with a

1 petition for civil commitment, legal assistance for filing petitions, and authorization to treat in
2 the time period between filing a petition and obtaining an order for commitment. Additionally,
3 we support extending the availability of the administrative authorization process to patients
4 who are subject to a petition for involuntary hospitalization.

5 The Department believes that the provider of care needs to prepare and present
6 information required for an administrative authorization process pursuant to Section 334-162,
7 Hawaii Revised Statutes (HRS) rather than a third-party, like the Department. For example, the
8 provider has specific patient health information that needs to be conveyed to the
9 administrative panel. Introducing a third-party review into the process will lead to
10 inefficiencies impacting timeliness as well as increased costs incurred by the state for third-
11 party review.

12 Further, we strongly believe that the facility or hospital should convene an
13 administrative panel rather than a third-party.

14 The Department is committed to supporting affected stateholders by providing
15 technical assistance and training as we believe these actions would better lead to the desired
16 outcomes of this measure.

17 We have been closely working with the Judiciary (JUD) and the Department of the
18 Attorney General (ATG) regarding court and administrative procedures. We respectfully defer
19 to the JUD on items in this bill that impact judicial proceedings and defer to the ATG for legal
20 matters.

21 Thank you for the opportunity to testify on this measure.

22 **Offered Amendments:** We respectfully request that the contents of Section 2, pages 2-3, be
23 deleted and replaced with the following H.D. 1 bill language.

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

3 “**§334-162 Criteria for administrative authorization process.** (a) A patient who has been
4 committed to a psychiatric facility for involuntary hospitalization or A patient who is in the
5 custody of the director and residing
6 in a psychiatric facility may be ordered to receive medical treatment over the patient's objection
7 through an administrative authorization process that includes the following due process
8 safeguards:

- 9 (1) The facility shall give notice to the patient of the authorization process and the reasons
10 for initiating the process;
- 11 (2) The administrative panel shall consist of three members with relevant clinical training
12 and experience, and who are not involved with the current treatment of the patient;
- 13 (3) The patient shall have the right to attend the hearing, receive assistance from an advisor,
14 cross examine witnesses, and present testimony, exhibits, and witnesses; and
- 15 (4) The patient shall have the right to appeal the decision of the administrative panel.
- 16 (b) The administrative process described by this section is exempt from the contested case
17 requirements of sections 91-8.5 to 91-15.
- 18 (c) The department may adopt rules, pursuant to chapter 91, to effectuate this part. [L 2017, c
19 111, pt of §2]”



HINAMAUKA

HB597 Substance Use and Mental Illness Lacking Decisional Capacity

COMMITTEE ON HEALTH & HOMELESSNESS

Rep. Della Au Belatti, Chair

Rep. Jenna Takenouchi, Vice Chair

Friday, Feb 10 2023: 10:00 : Room 329 Videoconference

Hina Mauka supports HB597

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the CEO of Hina Mauka, providing services for substance use disorder and mental health including programs for prevention, adult addiction treatment, adolescent treatment, case management, and withdrawal management. Helping people across all islands in locations on Oahu and Kauai.

This bill would allow psychiatrists or APRN having prescriptive authority to determine if a surrogate or guardian is needed to make health care decisions for a patient. It's a step in the right direction for people to receive the treatment they desperately need.

Why It Is Important

There are reoccurring cases of patients who are transported to ER through ambulances or brought by police that are experiencing debilitating psychotic episodes including drug induced psychosis from an addiction to methamphetamine. Such patients are often not coherent and tend to reoccur frequently such that without treatment they will be back again soon.

Hina Mauka supports that a psychiatrist or psychiatric APRN may file a petition for an administrative order to provide treatment over the patient's objection provided criteria are met. It's in the best interest of a disoriented patient who lacks decisional capacity that they receive medical services, which may include the administration of long-acting injectable psychotropic medication or other medications.

Trends:

37 states now include chronic substance abuse and/or chronic mental health disorders to be included for psychiatrists or APRN having prescriptive authority for making decisions about treatment in some form or another.

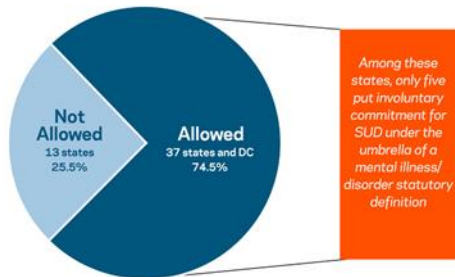


Figure 1. Legal Provision for Involuntary Commitment for Substance Use Disorders among U.S. states and DC (N=51)¹

For individuals with severe substance use disorder, several states are now implementing involuntary commitment laws for the first time or proposing changes to existing laws that would remove barriers to make commitment less difficult.

The substance abuse treatment gap between the need and access stems from stigma, the few number of available effective treatments and the inability of some individuals to seek treatment voluntarily.¹

What Treatment is Best.

After stabilization in a hospital environment, people with severe substance use disorder are often recommended **residential treatment that can ultimately transition, or step down, to outpatient treatment** and other lower levels of care. Such determinations are made by professionals based on criteria established by the American Society of Addiction Medicine.² Addiction is like other chronic illnesses in that the sooner it is recognized and the longer it is treated, the better the chances of recovery.

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

¹ Hazelden Betty Ford Foundation: Involuntary Commitment for Substance Use Disorders: <https://www.hazeldenbettyford.org/education/bcr/addiction-research/involuntary-commitment-edt-717>

² Mee-Lee, D. E. (2013). The ASAM criteria: Treatment criteria for addictive, substance-related, and co-occurring conditions. Rockville, MD: American Society of Addiction Medicine.

HB-597

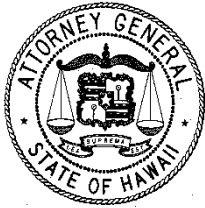
Submitted on: 2/8/2023 7:23:36 PM

Testimony for HLT on 2/10/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Hawaii Disability Rights Center	Oppose	Written Testimony Only

Comments:

In our testimony on HB 1156 we elaborated on our opposition to the expanded use of administrative panels. We continue to believe that they have no place beyond the limited context where they currently apply. Hawaii case law sets forth the judicial procedure which needs to be followed to involuntarily medicate an individual and it is not the process set forth in this bill. It certainly does not involve substituting the judgment of an administrative panel for the Courts. We do not believe this bill complies with the law.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:
H.B. NO. 597, RELATING TO HEALTH.

BEFORE THE:
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

DATE: Friday, February 10, 2023 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Jin Tae "JT" Kim, Deputy Attorney General

Chair Belatti and Members of the Committee:

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

The purpose of this bill is to expand the application of the administrative authorization process to any individual whom a psychiatrist or qualified advanced practice registered nurse (APRN) has examined and concluded to meet the criteria for a court or administrative order for treatment over the individual's objection pursuant to section 334-161, Hawaii Revised Statutes (HRS).

We are concerned that the bill might be subject to challenge as violating article I, section 5, of the Hawai'i Constitution, which states: "[n]o person shall be deprived of life, liberty or property without due process of law[.]" "Freedom from unjustified governmental intrusions into . . . bodily autonomy [is] at the core of the liberty protected by due process." *State v. Miller*, 84 Hawai'i 269, 273, 933 P.2d 606, 610 (1997).

Currently, individuals who have been committed to a psychiatric facility for involuntary hospitalization or who are in the custody of the Director and residing in a psychiatric facility may be treated over their objection pursuant to court order. See section 334-161, HRS. Additionally, a patient in the custody of the Director may be treated over the patient's objection through a less formal administrative process. See section 334-162, HRS. This bill would allow the administrative authorization process that is available to order treatment for patients in the custody of the Director and in a

psychiatric facility to be used for persons who are not patients in such facilities and could result in an administrative authorization to permit treatment over objection by the person and regardless of whether the person has been involuntarily hospitalized or is in the custody of the Director.

This bill could be subject to constitutional challenge based on due process grounds since there may not be sufficient individual protections, especially where an administrative order to treat is being sought for an individual who is not legally represented in the administrative proceeding and whose case has not first been reviewed through the judicial process, either through an involuntarily hospitalization proceeding or a criminal proceeding where custody has been placed with the Director pursuant to a court order.

While the goal of ensuring that a person who may be suffering from a physical or mental disease, disorder, or defect, and who is imminently dangerous to self or others, gets the medically appropriate treatment that the person needs, the means of doing that that affords the protections of due process to the person is through the involuntary hospitalization process available in part IV of chapter 334, HRS.

Additionally, the bill conflicts with section 334-162, HRS. The bill on page 3, lines 1 to 3, broadly allows a psychiatrist or APRN to "file a petition with the director to initiate the administrative authorization process pursuant to section 334-162[.]" However, section 334-162 limits the administrative process to "[a] patient who is in the custody of the director and in a psychiatric facility[.]"

Thank you for the opportunity to testify.

HB-597

Submitted on: 2/10/2023 6:39:28 AM

Testimony for HLT on 2/10/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Oppose	Written Testimony Only

Comments:

Strong opposition to HB597.