

Testimony of the Hawaii Medical Board

**Before the
Senate Committee on Health and Human Services
Monday, January 27, 2025
1:00 p.m.
Conference Room 225 and Videoconference**

**On the following measure:
S.B. 107, RELATING TO MEDICAL INFORMED CONSENT**

Chair San Buenaventura and Members of the Committee:

My name is Chelsea Fukunaga, and I am the Executive Officer of the Hawaii Medical Board (Board). The Board opposes this bill.

The purposed of this bill are to: (1) require the Hawaii Medical Board to establish standards for health care providers to ensure that a patient's consent to treatment is an informed consent; (2) require that informed consent for a proposed medical or surgical treatment or a diagnostic or therapeutic procedure shall be obtained before the day of that treatment or procedure; and (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.

For the Committee's information, Act 114, Session Laws of Hawaii 2003 mandated that the Board establish standards for health care providers to follow in giving information to a patient, or to a patient's guardian or legal surrogate if the patient lacks the capacity to give an informed consent, to ensure that the patient's consent to treatment is an informed consent. Subchapter 4 of the Hawaii Administrative Rules Chapter 16-85 addresses the purpose of informed consent, general standards of categories of information, manner of disclosure, refusal of information, etc.

In addition to the duplicative language between the bill and existing administrative rules, the Board is concerned that requiring two visits for a single procedure will place an extra burden on patients. This would be especially burdensome for neighbor island patients that receive health care on Oahu, resulting in patients having to travel twice between islands for a single procedure. Further, the Board is concerned that emergency procedures which require immediate attention may be negatively impacted and cause a disruption to emergency health care.

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S.B. 107

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For these reasons, the Board opposes Senate Bill No. 107 and respectfully requests that it be held in committee.

Thank you for the opportunity to testify on this bill.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Joy San Buenaventura, Chair
The Honorable Henry Aquino, Vice Chair
Members, Senate Committee on Health & Human Services

From: Jacce Mikulanec, Director, Government Relations, The Queen's Health System

Date: January 27, 2025

Re: Comments on SB107 – 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 10,000 affiliated physicians, caregivers, and dedicated medical staff 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 on SB107, which requires the Hawai'i Medical Board to establish standards for health care providers to ensure that a patient's consent to treatment is an informed consent and requires that informed consent for a proposed medical or surgical treatment or a diagnostic or therapeutic procedure shall be obtained before the day of that treatment or procedure. The measure also specifies 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.

Our health systems currently follow a policy of informed consent under Patient Rights and Responsibilities; the policy addresses informed consent, information about treatment, and participation in care decisions. Communications on consent and treatment are provided within reasonable time and within the limits of the law. Furthermore, should a patient feel that consent or information about treatment was not provided within a reasonable time, our patient relations program is equipped to receive and address any complaint.

We would note that, as with any new requirement, updating protocol of this sort does require us to administratively change and update existing policies and procedures, therefore, we would ask for adequate time to comply with the proposals within SB107.

The mission of The Queen's Health System 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.



January 27, 2025 at 1:00 pm
Conference Room 225

Senate Committee on Health and Human Services

To: Chair Joy A. San Buenaventura
Vice Chair Henry J.C. Aquino

From: Paige Heckathorn Choy
AVP, Government Affairs
Healthcare Association of Hawaii

Re: **Submitting Comments**
SB 107, 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 30,000 people statewide.

Thank you for the opportunity to provide **comments** regarding SB 107, which would require the Hawaii Medical Board to establish standards for health care providers regarding informed consent, including a new provision governing the timing of informed consent for medical treatments and procedures. We recognize the importance of informed consent in ensuring that patients are provided with sufficient information to make meaningful decisions about their care. However, we have some concerns regarding the necessity of this measure, specifically in what deficiencies these changes would achieve, and whether it may create duplicative processes for providers.

Of note, Hawaii law and medical practice standards already require health care providers to obtain informed consent from patients or their legal surrogates before proceeding with treatments or procedures. This existing framework ensures that patients are informed about the risks, benefits, and alternatives to a proposed course of action. The additional requirement for the Hawaii Medical Board to establish new standards could be duplicative of established protocols and existing regulations. Better understanding of the current deficiencies and the process, and how the proposed changes would improve upon current practices without adding duplication, would be helpful to improving the patient's experience.

Thank you for the opportunity to provide these comments. We remain committed to supporting measures that prioritize patient safety and autonomy while ensuring efficient delivery of care.



Hawaii Medical Association

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SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Senator Joy A. San Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair

Date: January 27, 2025
From: Hawaii Medical Association (HMA)
Jerald Garcia MD - Chair, HMA Public Policy Committee

RE SB 107 Relating to Medical Informed Consent- Medical Informed Consent; Timing; Hawai'i Medical Board; Standards

Position: Comments

This measure would require the Hawai'i Medical Board to establish standards for health care providers to ensure that a patient's consent to treatment is an informed consent: consent shall be obtained before the day of that treatment or procedure; specifies 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.

There exists federal, state and accreditation organization standards that specify requirements for medical informed consent. Respectfully HMA submits that requirements in this bill are duplicative and unnecessary. Please see:

- Subchapter 4 of Hawaii Administrative Rules chapter 16-85, address the purpose of informed consent, general standards of categories of information, manner of disclosure, refusal of information, etc. This was mandated by Act 114, Session Laws of Hawaii 2003.
- The Center for Medicare and Medicaid services (CMS) requirements related to informed consent are found in the Patient's Rights Condition of Participation (CoP) at 42 CFR 482.13(b)(2); the Medical Record Services CoP at 482.24(c)(4)(v); and the Surgical Services CoP at 482.51(b)(2) and are further described in the State Operations Manual (SOM), Appendix A.

Patients should receive full disclosure of the risks, benefits and alternative options of their medical care. Hawaii physicians will continue to work hard to deliver high quality and safe medical care, in compliance with Hawaii laws as well as recognized standards of care.

Thank you for allowing the Hawaii Medical Association to provide comments on this measure.

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2024 Hawaii Medical Association Public Policy Coordination Team

Jerald Garcia, MD, Chair
Linda Rosehill, JD, Government Relations • Marc Alexander, Executive Director

References and Quick Links:

1. Center for Medicare and Medicaid services (CMS). https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf Accessed Jan 25 2025.
2. Hawaii Administrative Rules. https://cca.hawaii.gov/pvl/files/2013/08/har_85-c1.pdf Accessed Jan 25 2025.
3. The Joint Commission. [Quick Safety 21: Informed consent: More than getting a signature \(Updated: April 2022\)](#) . Accessed Jan 25 2025.

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