

ACT 129

S.B. NO. 1124

A Bill for an Act Relating to Mental Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 221, Session Laws of Hawaii 2013 (Act 221), was enacted with the intent of helping individuals with serious mental illness obtain the treatment and medication they needed, through the concept of “assisted community treatment.” Five years later, however, the potential of assisted community treatment is no closer to reality. Less than ten orders for court-mandated treatment plans have been issued during the past five years.

In the statement of findings and purpose of Act 221, the legislature found that the State had “identified serious problems of high incarceration and hospitalization rates of those with severe mental illness” and that the circumstances reflected “a failure to provide needed treatment to persons who may need it most and that failure is extremely costly.” These findings remain true today.

The purpose of this Act is to clarify the petitions, procedures, and hearings for involuntary hospitalization and assisted community treatment to promote mental health treatment.

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

“§334- Examination for assisted community treatment indication.

A licensed psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization associated with the licensed psychiatric facility where a person is located who was committed to involuntary hospitalization, delivered for emergency examination or emergency hospitalization, or voluntarily admitted to inpatient treatment at a psychiatric facility pursuant to part IV shall, prior to the person’s discharge, examine the person to determine whether an assisted community treatment plan is indicated pursuant to this part. If a plan is indicated, the psychiatrist or advanced practice registered nurse shall prepare the certificate specified by section 334-123. The psychiatric facility may notify another mental health program for assistance with the coordination of care in the community for the person. Nothing in this section shall delay the appropriate discharge of a person from the psychiatric facility after the examination for assisted community treatment indication has been completed.”

SECTION 3. Section 334-1, Hawaii Revised Statutes, is amended by amending the definition of “dangerous to self” to read as follows:

““Dangerous to self” means the person recently has:

- (1) Threatened or attempted suicide or serious bodily harm; or
- (2) Behaved in such a manner as to indicate that the person is unable, without supervision and the assistance of others, to satisfy the need for nourishment, essential medical care, including treatment for a

mental illness, shelter or self-protection, so that it is probable that death, substantial bodily injury, or serious physical debilitation or disease will result unless adequate treatment is afforded.”

SECTION 4. Section 334-121, Hawaii Revised Statutes, is amended to read as follows:

“§334-121 Criteria for assisted community treatment. A person may be ordered to obtain assisted community treatment if the family court finds, based on the professional opinion of a psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization, that:

- (1) The person is mentally ill or suffering from substance abuse;
- (2) The person is unlikely to live safely in the community without available supervision ~~[based on the professional opinion of a psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization];~~ is now in need of treatment in order to prevent a relapse or deterioration that would predictably result in the person becoming imminently dangerous to self or others, and the person’s current mental status or the nature of the person’s disorder limits or negates the person’s ability to make an informed decision to voluntarily seek or comply with recommended treatment;
- [(3) The person, at some time in the past: (A) has received inpatient hospital treatment for mental illness or substance abuse or (B) has been found to be imminently dangerous to self or others, as a result of mental illness or substance abuse;
- (4) The person, based on the person’s treatment history and current condition, is now in need of treatment in order to prevent a relapse or deterioration which would predictably result in the person becoming imminently dangerous to self or others;
- (5) The person has a history of a lack of adherence to treatment for mental illness or substance abuse, and the person’s current mental status or the nature of the person’s disorder limits or negates the person’s ability to make an informed decision to voluntarily seek or comply with recommended treatment;
- (6) The assisted community treatment is medically appropriate, and in the person’s medical interests; and
- (7) (3) The person has a:
 - (A) Mental illness that has caused that person to refuse needed and appropriate mental health services in the community; or
 - (B) History of lack of adherence to treatment for mental illness or substance abuse that resulted in the person becoming dangerous to self or others and that now would predictably result in the person becoming imminently dangerous to self or others; and
- (4) Considering less intrusive alternatives, assisted community treatment is essential to prevent the danger posed by the person[-], is medically appropriate, and is in the person’s medical interests.”

SECTION 5. Section 334-123, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any interested party may file a petition with the family court alleging that another person meets the criteria for assisted community treatment. The petition shall state:

- (1) Each of the criteria under section ~~[334-121(1) through (7)]~~ 334-121 for assisted community treatment;
- (2) Petitioner’s good faith belief that the subject of the petition meets each of the criteria under section ~~[334-121(1) through (7);]~~ 334-121;
- (3) Facts that support the petitioner’s good faith belief that the subject of the petition meets each of the criteria under section ~~[334-121(1) through (7);]~~ 334-121; and
- (4) That the subject of the petition is present within the county where the petition is filed.

The hearing on the petition need not be limited to the facts stated in the petition. The petition shall be executed subject to the penalties of perjury~~[-]~~ but need not be sworn to before a notary public.

(b) The petition may be accompanied by a certificate of a licensed psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization who has examined the subject of the petition within twenty calendar days prior to the filing of the petition. For purposes of the petition, an examination shall be considered valid so long as the licensed psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization has obtained enough information from the subject of the petition to reach a diagnosis of the subject of the petition, and to express a professional opinion concerning the same, even if the subject of the petition is not fully cooperative. If the petitioner believes that further evaluation is necessary before treatment, the petitioner may request further evaluation.”

SECTION 6. Section 334-127, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If after hearing all relevant evidence, including the results of any diagnostic examination ordered by the family court, the family court finds that the criteria for assisted community treatment under section 334-121(1) have been met beyond a reasonable doubt and that the criteria under section 334-121(2) to ~~[334-121(7)]~~ 334-121(4) have been met by clear and convincing evidence, the family court shall order the subject to obtain assisted community treatment for a period of no more than one year. The written treatment plan submitted pursuant to section 334-126(h) shall be attached to the order and made a part of the order.

If the family court finds by clear and convincing evidence that the beneficial mental and physical effects of recommended medication outweigh the detrimental mental and physical effects, if any, the order may authorize types or classes of medication to be included in treatment at the discretion of the treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization.

The court order shall also state who should receive notice of intent to discharge early in the event that the treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization determines, prior to the end of the court ordered period of treatment, that the subject should be discharged early from assisted community treatment.

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Notice of the order shall be provided to those persons entitled to notice pursuant to section 334-125.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 2019.

(Approved June 25, 2019.)

Note

1. Edited pursuant to HRS §23G-16.5.