

LATE

STATE OF HAWAII
DEPARTMENT OF HEALTH
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Honolulu, HI 96801-3378
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**Testimony COMMENTING on H.B. 1661 H.D. 1
RELATING TO HEALTH**

REPRESENTATIVE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date and Time: Thursday, February 13, 2020 at 9:00 a.m.

Room: 329

1 **Department Position:** The Department of Health (“Department”) offers comments and a
2 proposed HD2.

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 As drafted in this measure, amending the definitions of “dangerous to others” and
16 “dangerous to self” in chapter 334, Hawaii Revised Statutes (HRS), includes the refusal to take
17 psychiatric medication or participate in mental health treatment as a singular basis for
18 involuntary commitment. The Department finds this step problematic in maintaining a

1 balanced approach to upholding civil liberty and providing involuntary treatment where
2 necessary and appropriate. The Department assesses that the current definitions of
3 “dangerous to self” and “dangerous to others”, along with the current definition of “imminently
4 dangerous to self or others” both encompass the intent of the proposed language and
5 maintains that balance.

6 We acknowledge that active and decisive steps must be taken to better operationalize
7 the involuntary commitment process so that individuals who would fall under the current
8 criteria of the statute may be better assisted and to better protect the safety of the public. There
9 are several very significant efforts underway by the department, and for which we greatly
10 have broad legislative support, that will the level of balanced implementation we seek.

11 **For these reasons, the Department respectfully requests that the revisions of**
12 **definitions proposed in this measure not be included in section 334-1, HRS.**

13 Alternatively, the Department, in collaboration with state agency partners through the
14 task force and working group of Act 90 and Act 263, Session Laws of Hawaii 2019; specifically
15 with the MH1 work group, offer a proposed HD2. We believe the proposed HD2 would
16 enhance the current efforts of the Department and its stakeholder partners. The proposed HD2
17 would also maintain alignment with the mental health task force’s report and address some of
18 the needs identified.

19 If adopted by the committee, we believe that the new language of the measure would
20 better support continued discussion and efforts to achieve optimal levels of functionality within
21 the mental health crisis management system for the state.

22 **Offered Amendments:** The Department respectfully offers the attached proposed HD2.

23 Thank you for the opportunity to testify.

24 **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 Hawaii's current~~
2 ~~standard for involuntary hospitalization does not adequately~~
3 ~~prevent harm, either to persons suffering from mental illness or~~
4 ~~substance abuse, or to members of the public. The legislature~~
5 ~~recognizes that a portion of the mentally ill population,~~
6 ~~including the chronically homeless, is being deprived of urgent,~~
7 ~~medically appropriate mental health intervention that is best~~
8 ~~administered on an inpatient basis.~~

9 ~~The legislature further finds that although mentally ill~~
10 ~~individuals have a right to refuse medication or mental health~~
11 ~~treatment to some degree, steps must be taken to ensure that~~
12 ~~these individuals take medication and undergo treatment that is~~
13 ~~necessary to help prevent them from causing danger to themselves~~
14 ~~or to others.~~

15 The legislature finds that a comprehensive mental health
16 response system is needed to serve the dual purpose of

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1 supporting individuals suffering from a behavioral health crisis
2 and maintaining public safety.

3 The legislature further finds that the system has multiple
4 steps for mental health crisis intervention, including initial
5 contact by first responders, determining need and basis for
6 involuntary transport for evaluation, and determination for
7 disposition once an individual has been taken into custody under
8 an MH-1.

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

15 The purpose of this Act is to ~~strengthen public health and~~
16 ~~safety~~ support the efforts of the mental health task force by
17 ~~amending the definitions of "dangerous to others" and "dangerous~~
18 ~~to self" in chapter 334, Hawaii Revised Statutes, to further~~
19 define and guide the process that occurs when an individual has
20 been transported to an emergency department or behavioral health
21 crisis center under an MH-1 order for evaluation and the
22 disposition of the individual once the evaluation has been

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1 ~~completed include the refusal to take psychiatric medication or~~
2 ~~undergo mental health treatment such that self-inflicted~~
3 ~~violence and violence to others is probably. This act will~~
4 ~~allow law enforcement and hospital workers to intervene and~~
5 ~~temporarily take individuals into custody when certain~~
6 ~~medication is not taken or necessary mental health treatment is~~
7 ~~not used.~~

8 SECTION 2. Section 334-159, Hawaii Revised Statutes, is
9 amended as follows:

10 1. ~~By amending the definition of "dangerous to others" to~~
11 ~~read:~~

12 ~~—"Dangerous to others" means a person who:~~

13 ~~(1) Is likely to do substantial physical or emotional~~
14 ~~injury on another, as evidenced by a recent act,~~
15 ~~attempt, or threat[.]; or~~

16 ~~(2) Refuses to take psychiatric medication or participate~~
17 ~~in mental health treatment and that without such~~
18 ~~medication or treatment makes the person probable to~~
19 ~~cause, attempt to cause, or threaten substantial~~
20 ~~physical or emotional injury on another."~~

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1 2. ~~By amending the definition of "dangerous to self" to~~
2 ~~read:~~

3 ~~"Dangerous to self" means the person recently has:~~

4 ~~(1) Threatened or attempted suicide or serious bodily~~
5 ~~harm; [or]~~

6 ~~(2) Behaved in such a manner as to indicate that the~~
7 ~~person is unable, without supervision and the~~

8 ~~assistance of others, to satisfy the need for~~

9 ~~nourishment, essential medical care, including~~

10 ~~treatment for a mental illness, shelter, or self-~~

11 ~~protection, so that it is probably that death,~~

12 ~~substantial bodily injury, or serious physical~~

13 ~~debilitation or disease will result unless adequate~~

14 ~~treatment is afforded[.]; or~~

15 ~~(3) Refused to take psychiatric medication or participate~~

16 ~~in mental health treatment and that without such~~

17 ~~medication or treatment makes the person probable to~~

18 ~~threaten or attempt suicide or serious bodily harm."~~

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1 (b) Emergency examination. A patient who is delivered for
2 emergency examination and treatment to a psychiatric
3 facility or a behavioral health crisis center specifically
4 designed and staffed to provide care, diagnosis, or
5 treatment for persons in crisis who are experiencing a
6 mental illness or substance use disorder ~~designated by the~~
7 ~~director~~ shall be provided an examination, which shall
8 include a screening to determine whether the criteria for
9 involuntary hospitalization listed in section 334-602,
10 Hawaii Revised Statutes, persists ~~examined~~ by a licensed
11 physician, medical resident under the supervision of a
12 licensed physician, or advanced practice registered nurse
13 without unnecessary delay, and shall ~~may~~ be provided ~~given~~
14 such treatment as is indicated by good mental health
15 practice. If, after the examination, screening, and
16 treatment, the licensed physician, medical resident under
17 the supervision of a licensed physician, or advanced
18 practice registered nurse determines that the involuntary
19 hospitalization criteria persists, then a ~~A~~
20 psychiatrist~~[7]~~ or an advanced practice registered nurse
21 with prescriptive authority and who holds an accredited
22 national certification in an advanced practice registered

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1 nurse psychiatric specialization, or psychologist may shall
2 further examine the patient to diagnose the presence or
3 absence of a mental or substance use disorder, further
4 assess the risk that the patient may be dangerous to self
5 or others, and assess whether or not the patient needs to
6 be hospitalized. If it is determined that a
7 hospitalization is not needed, evaluation pursuant to 334-
8 121.5, Hawaii Revised Statutes, shall be completed."

9 (c) Release from emergency examination. If, after examination,
10 the licensed physician, psychiatrist, advanced practice
11 registered nurse, advanced practice registered nurse with
12 prescriptive authority who holds an accredited national
13 certification in an advanced practice registered nurse
14 psychiatric specialization, ~~in consultation with a~~
15 ~~psychologist if applicable, concludes~~ determines that
16 imminent dangerousness to self or others does not exist or
17 persist and the evaluation pursuant to 334-121.5, Hawaii
18 Revised Statutes, where required, has been completed, ~~the~~
19 ~~patient need not be hospitalized,~~ the patient shall be
20 discharged expediently ~~immediately~~ unless the patient is
21 under criminal charges, in which case the patient shall be
22 returned to the custody of a law enforcement officer.

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1 (d) Emergency hospitalization. If the ~~physician, psychiatrist~~
2 or advanced practice registered nurse who holds an
3 accredited national certification in an advanced practice
4 registered nurse psychiatric specialization, ~~or~~
5 ~~psychologist~~ who performs the emergency examination has
6 reason to believe that the patient is:

7 (1) Mentally ill or suffering from substance abuse;
8 (2) Imminently dangerous to self or others; and
9 (3) In need of care or treatment, or both;

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

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1 beneficiary, and shall make reasonable efforts to ensure
2 that the patient's guardian or family including a
3 reciprocal beneficiary, is notified of the emergency
4 admission but the patient's family including a reciprocal
5 beneficiary need not be notified if the patient is an adult
6 and requests that there be no notification. The patient
7 shall be allowed to confer with an attorney in private.
8 (e) Release from emergency hospitalization. If at any time
9 during the period of emergency hospitalization the
10 responsible physician ~~concludes~~ determines that the patient
11 no longer meets the criteria for emergency hospitalization
12 and the evaluation pursuant to 334-121.5, Hawaii Revised
13 Statutes, has been completed, the physician shall
14 expediently discharge the patient. If the patient is under
15 criminal charges, the patient shall be returned to the
16 custody of a law enforcement officer. In any event, the
17 patient must be released within forty-eight hours of the
18 patient's admission, unless the patient voluntarily agrees
19 to further hospitalization, or a proceeding for court-
20 ordered evaluation or hospitalization, or both, is
21 initiated as provided in section 334-60.3. If that time
22 expires on a Saturday, Sunday or holiday, the time for

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

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

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

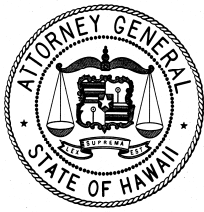
10 SECTION 5. This Act shall take effect on July 1, 2050.

Report Title:

Mental Health; Mental Illness; Involuntary Hospitalization

Description:

Amends section 334-59, Hawaii Revised Statutes, to include revised language consistent with the current process for emergency examination, release from emergency examination, emergency hospitalization, and release from emergency hospitalization ~~the definitions of "dangerous to others" and "dangerous to self" to include the refusal to take psychiatric medication or undergo mental health treatment such that self-inflicted violence or violence to others is probable.~~ Takes effect 7/1/2050. (HD1)



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

ON THE FOLLOWING MEASURE:

H.B. NO. 1661, H.D. 1, RELATING TO HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Thursday, February 13, 2020 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

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

Chair Mizuno and Members of the Committee:

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

This bill modifies the definition of “dangerous to others” in section 334-1, Hawaii Revised Statutes, to include refusal to take psychiatric medication or participate in mental health treatment such that it is probable that violence or threatened violence will occur. It also modifies the definition of “dangerous to self” in section 334-1 to include refusal to take psychiatric medication or participate in mental health treatment such that it is probable that self-harm or threat of self-harm will occur.

The Department recommends that technical amendments be made for the sake of clarity and consistency. Section 2, page 2, lines 15 to 19, should be amended to read as follows:

- (2) Refuses to take psychiatric medication or participate in mental health treatment and without such medication or treatment is probable to cause, attempt to cause, or threaten substantial physical or emotional injury to another.”

Section 2, page 3, lines 15 to 18, should be amended to read as follows:

- (3) Refused to take psychiatric medication or participate in mental health treatment and without such medication or treatment is probable to threaten or attempt suicide or serious bodily harm.”

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

HB-1661-HD-1

Submitted on: 2/11/2020 1:48:14 PM

Testimony for HLT on 2/13/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments	No

Comments:

While we can appreciate that the intent of this measure is to protect individuals as well as the general public from the failure to take medication or to engage in mental health treatment, in light of the current definition in the law of “imminently dangerous” we are not sure if this adds anything or not. We would like to hear the views of other stakeholders. If it does then perhaps it is worth consideration. If not, then it may cause confusion.



HB1661 HD1 Refusal to take needed medication could be dangerous to self and others

COMMITTEE ON HEALTH:

- Rep John Mizuno, Chair; Rep. Bertrand Kobayashi, Vice Chair
- Thursday, Feb. 13th, 2020: 9:00 am:
- Conference Room 329

Hawaii Substance Abuse Coalition Supports HB1661 HD1:

GOOD MORNING 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 non-profit alcohol and drug treatment and prevention agencies.

HSAC defers to the Judiciary for appropriate language; however we support the intent to include the refusal to medications if the refusal poses a danger to self or others.

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 disorder treatment. What they get is inadequate care over and over again.¹
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.²
6. **Effective healthcare system transformation requires developing effective high utilizers' strategies.** High utilizers are reported to be 5% of the population yet account

¹ 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/>

² 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/>

for up to 50% of healthcare expenditures. The high medical costs of recurring inpatient or emergency department visits is generally regarded as *preventable*.³

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.

³ National Center for Biotechnology Information: PubMed Central: U.S. National Library of Medicine: National Institutes of Health: *Is a Strategy Focused on Super-Utilizers Equal to the Task of Healthcare System Transformation - Yes*: Ann Fam Med, (2015): <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4291257/>



HB1661 HD1 Refusal to take needed medication could be dangerous to self and others

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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.²
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Testimony of
Jonathan Ching
Government Relations Manager

LATE

Before:
House Committee on Health
The Honorable John H. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair

February 13, 2020
9:00 a.m.
Conference Room 329

Re: HB1661, HD1, Relating to Health

Chair Mizuno, Vice-Chair Kobayashi, and committee members, thank you for this opportunity to provide testimony on HB1661, HD1, which amends the definitions of "dangerous to others" and "dangerous to self" to include the refusal to take psychiatric medication or undergo mental health treatment such that self-inflicted violence or violence to others is probable.

Kaiser Permanente Hawai'i offers the following COMMENTS and requests an AMENDMENT

We concur with the amendments being offered by the Department of Health. In addition, given that there has been ambiguity in practice on when a 48-hour involuntary hold begins, we request the committee consider one additional amendment:

(e) Release from emergency hospitalization. If at any time during the period of emergency hospitalization the responsible physician concludes that the patient no longer meets the criteria for emergency hospitalization the physician shall discharge the patient. If the patient is under criminal charges, the patient shall be returned to the custody of a law enforcement officer. In any event, the patient must be released within forty-eight hours of the patient's admission upon admission to a licensed psychiatric facility, unless the patient voluntarily agrees to further hospitalization, or a proceeding for court-ordered evaluation or hospitalization, or both, is initiated as provided in section 334-60.3. If that time expires on a Saturday, Sunday, or holiday, the time for initiation is extended to the close of the next court day. Upon initiation of the proceedings the facility shall be authorized to detain the patient until further order of the court.

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

HB-1661-HD-1

Submitted on: 2/10/2020 7:52:27 PM

Testimony for HLT on 2/13/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Maupin	Individual	Support	No

Comments:

HB-1661-HD-1

Submitted on: 2/12/2020 7:49:52 AM

Testimony for HLT on 2/13/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Erika Vargas	Individual	Support	No

Comments: