

MIEC New Law Alert

Number 23
 September 2015
 Hawaii Edition

New Law Alert – Hawaii

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The Hawaii Legislature recently enacted a number of new laws affecting physicians, other health care professionals and patients.

Changes to petitions for Assisted Community Treatment

Effective July 13, 2015
 SB0961 SD2 HD3 (HSCR 1633).
 Introduced by: Chun Oakland S, Green J

Assisted Community Treatment (ACT) is when the court orders a person to undergo treatment (which may include receiving medication) in order to remain living in the community, as opposed to having a person involuntarily “committed” to a hospital. The ACT program was passed in Hawaii in 2014 and allowed any family member, caregiver or private party the right to petition the family court for ACT of a person who is mentally ill. Participation of a psychiatrist is required. This new law introduces a number of changes to the petition process, including:

- Changes the petition accompanied by a certification of a licensed psychiatrist who has examined the subject of the petition from at any time to no longer than 20 calendar

days prior to the filing of the petition.

- Provides that an examination shall be considered valid so long as the licensed psychiatrist 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.
- Repeals the provision that requires if the subject of the petition has refused to submit to examination by a licensed psychiatrist, the fact of the refusal shall be alleged in the petition.
- Amends provisions relating to hearing date.
- Repeals the 10 day filing period to the family court.
- Requires notice of all subsequent hearings to be served and in accordance with all applicable family court rules relating to service of notice, including that service need not be made on parties in default for failure to appear.

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- Allows the court to appoint a guardian ad litem to represent the best interests of the subject through the proceedings.
- Requires the public defender or other court appointed counsel to represent the subject upon filing of the petition; a copy of the petition to be served upon the public defender by the petitioner; and the public defender or the court appointed counsel may withdraw upon a showing that the subject is not indigent; and if the subject does not desire representation the court may discharge the attorney after finding that the subject understands the proceedings and the relief prayed for in the petition.
- Provides that no subject of the petition shall be ordered to receive assisted community treatment unless at least one (1) psychiatrist testifies in person at the hearing who has personally assessed the subject, within a reasonable time before the filing of the petition up to the time when the psychiatrist provides oral testimony at court.
- Repeals that the subject of the petition has refused to be examined by a licensed psychiatrist; requires that the subject of the petition's refusal to submit voluntarily to examination to be treated as a denial that the subject is mentally ill or suffering from substance abuse.
- Amends provisions relating to right to representation by public defender or other appointed counsel.

- Changes involuntary outpatient treatment to assisted community treatment.
- Amends Act 221, session laws of 2013, by requiring treating providers to provide information and data obtained related to MH-1s (MH-1s) and hospitalization of persons who are under an order to treat to the department of health, or its designee.

For more information, please contact:

National Alliance on Mental Illness (NAMI) Hawaii
www.namihawaii.org

Mental Health America Hawaii
www.mentalhealth-hi.org

The Institute for Human Services
www.ihshawaii.org

Sections affected: 334-123, 334-124, 334-125, 334-126, 802-1, 802-5, ACT 221 2013

Medical marijuana patient and caregiver protections

Effective July 14, 2015
 SB1291 SD2 HD2 CD1 (CCR 49)
 Introduced by: Keith-Agaran G, English J, Ruderman R, Espero W

This new law provides certain protections for patients and primary caregivers in the medical marijuana (cannabis) program, including:

- Prohibits a school to refuse to enroll or otherwise penalize, and landlord to refuse to lease property to or otherwise penalize, a person solely for their status as a qualifying patient or primary caregiver in

the medical marijuana program, unless failing to do so would cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulation; provided that the qualifying patient or primary caregiver strictly complied with the requirements of this part.

- Provides that for the purposes of medical care, including organ transplants, a registered qualifying patient's use of marijuana in compliance shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.
- Prohibits a qualifying patient or primary caregiver to be denied custody of; visitation with; or parenting time with a minor, and there shall be no presumption of neglect or child endangerment, for conduct allowed; provided that shall not apply if the qualifying patient's or primary caregiver's conduct created a danger to the safety of the minor as established by a preponderance of the evidence.

Sections affected: 329- (1 SECTION), 421J- (1 SECTION), 514A- (1 SECTION), 514B- (1 SECTION)

Medical Marijuana Dispensary system

Effective July 1, 2015

HB0321 HD1 SD2 CD1 (CCR 170)

Introduced by: Souki J, Belatti D, Saiki S, Creagan R, Takayama G, Luke S, Nishimoto S, Takumi R, Rhoads K, Lee C, Evans C, San Buenaventura J, Morikawa D, Ing K, Hashem M, Mizuno J, McKelvey A, Brower T, Nakashima M, Thielen C, Kobayashi B

This new law establishes provisions relating to the medical marijuana (cannabis) dispensary system, which will not be detailed here. It also includes the following provisions that directly relate to physicians and their patients:

- Post Traumatic Stress Disorder (PTSD) is added as an eligible debilitating medical condition; and
- The requirement that the certifying physician by the qualifying patient's primary care physician has been changed to require that the certifying physician have a bona fide physician-patient relationship with the qualifying patient.

Sections affected: (27 SECTIONS) MEDICAL MARIJUANA DISPENSARY SYSTEM, 46-4, 321-30.1, 329- (4 SECTIONS), 329-121, 329-122, 329-123, 846-2.7

Pharmacist administration of vaccines to minors aged 14 - 17

Effective May 5, 2015

HB0253 HD2 SD1 (SSCR 1307)

Introduced by: Evans C, McKelvey A, Belatti D

This law authorizes a pharmacist to administer a vaccine to persons between 14 and 17 years of age pursuant to a valid prescription and authorizes the Board of Pharmacy to deny, revoke, or suspend any license or permit applied for or issued by the Board.

Sections affected: 461-1, 461-8, 461-11.4, 461-21

Nurse license renewal learning activity requirements

Effective June 19, 2015

HB0354 HD2 SD1 (SSCR 1032).

Introduced by: Kobayashi B, McKelvey A, Woodson J

This law requires each registered nurse and practical nurse licensee, beginning July 1, 2017, with the renewal of the licensing biennium and every biennial renewal thereafter, to have completed one (1) of the learning activity options as recognized by the state board of nursing within the 2 year period preceding the renewal date. According to legislative talking points published by the Hawaii State Center for Nursing, the Continuing Competency Program (CCP) learning activity options include national certification in a nursing specialty, 30 contact hours of CEs, academic credits related to nursing, nursing refresher courses, and professional development activities including completing nursing research or evidence based practice projects, authoring or co-authoring nursing related articles, papers, books, or book chapters, developing and conducting nursing education presentations, and completing nurse residency programs.

Sections affected: 457- (2 SECTIONS), 457-2, 457-12

Newborn pulse oximetry screening

Effective July 1, 2015

HB0467 HD1 SD1 (SSCR 1463).

Introduced by: Creagan R, Morikawa D, Fukumoto Chang B, Carroll M, Kobayashi B, Oshiro M, Belatti D

This law establishes provisions relating to newborn pulse oximetry screening, including:

- Requires a birthing facility to perform a pulse oximetry test for critical congenital heart defects or other medically accepted test that measures the percentage of blood oxygen saturation, as approved by the guidelines of the American Academy of Pediatrics, on every newborn in its care prior to discharge from the birthing facility.
- Provides that this provision shall not apply if parents, guardians, or other persons having custody or control of the child objects on the grounds that the tests conflict with their religious tenets and beliefs and written objection is made a part of the newborn's medical record.
- Requires birthing facility to report critical congenital heart defect screening data to the Department of Health for quality assurance and improvement activities.

Section affected: 321- (1 SECTION) NEWBORN PULSE OXIMETRY SCREENING

Stroke care improvement and coordination

Effective July 2, 2015
HB0589 HD1 SD1 (SSCR 1033)
Introduced by: Belatti D,
Kobayashi B, Brower T,
McKelvey A

This law requires the Department of Health to participate in a systematic process to evaluate and improve stroke care throughout the State to reduce death and disability from stroke. It requires the stroke system of care to include the requirement that hospitals meet specific stroke patient treatment capabilities that will ensure that stroke patients receive safe and effective care; the coordination with the State's emergency medical services system to ensure that stroke patients are quickly identified, transported to, and treated in facilities that have specialized programs for providing timely and effective treatment for stroke patients to improve outcomes; and the continuation of a statewide Stroke Coalition to provide a mechanism to evaluate and improve stroke care in the State. It requires the Department to participate in the Stroke Coalition and a stroke database; requires all acute care hospitals that receive stroke patients from emergency medical services to report data consistent with requirement of the stroke database on the treatment of all individuals with a suspected or confirmed stroke; and prohibits the Department of Health and the Coalition to disclosure of any confidential information or other data in violation of the federal and state privacy regulations.

Sections affected: 321- (4 SECTIONS) STROKE CARE

Certificates of birth and gender transition

Effective July 1, 2015
HB0631 HD2 SD1 CD1 (CCR 47)
Introduced by: Lee C, Evans C,
Belatti D

This new law amends provisions relating to establishment of a new certificate of birth when the birth registrant has transitioned to a new gender. A new birth certificate must be provided upon receipt of an affidavit from a US licensed physician attesting that:

- The physician has a bona fide physician-patient relationship with the birth registrant;
- The physician has treated and evaluated the birth registrant and has reviewed and evaluated the birth registrant's medical history;
- The birth registrant has had appropriate clinical treatment for gender transition to the new gender and has completed the transition to the new gender, and;
- The new gender does not align with the sex designation on the birth registrant's birth certificate.

The new certificate shall not be marked as amended and shall in no way reveal the original language changed by any amendment and sealed documents shall be opened only by an order of a court of record or for those documents amended by request of the birth registrant. Furthermore, the law prohibits the Department of Health to require any additional

medical information or records other than those required.

Section affected: 338-17.7

Cytomegalovirus public education

Effective July 1, 2015
HB0782 HD1 SD2 CD1
(CCR 114)
Introduced by: Woodson J,
Creagan R

This law requires the Department of Health to provide a public education program to inform pregnant women and women who may become pregnant regarding the transmission of the cytomegalovirus; birth defects caused by congenital cytomegalovirus; methods of diagnosing congenital cytomegalovirus; and available preventative measures. The Department is required to provide information to licensed hospitals; healthcare providers offering care to pregnant women and infants; registered family child care homes; licensed group child care centers; licensed group child care homes; licensed infant and toddler child care centers; and religious, ecclesiastical, or denominational organizations offering children's programs as a part of worship services.

Section affected:
321- (1 SECTION)
CYTOMEGALOVIRUS PUBLIC
EDUCATION

We thank Thomas E. Cook, Esq., of Lyons, Brandt, Cook and Hiramatsu, Honolulu, Hawaii, for his review of this edition of New Law Alert.