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# A BILL FOR AN ACT

RELATING TO HEALTH CARE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that a very serious issue  
2 facing our State is the lack of capacity currently in our  
3 community to provide adequate care in community-based  
4 residential settings. This is true not only for individuals  
5 with disabilities, but for the vast majority of elderly  
6 individuals in need of basic medical care or assistance with  
7 their activities of daily living. This lack of capacity is  
8 going to become more exacerbated over time, as our population  
9 ages. The legislature further finds that one of the unfortunate  
10 results of this lack of capacity has been a disturbing increase  
11 in the number of Hawaii residents discharged from hospitals or  
12 treatment facilities in Hawaii to facilities on the mainland.

13           The legislature finds this to be an unacceptable situation.  
14 As an island community, we have a responsibility to take care of  
15 our elders and individuals with disabilities in a proper  
16 fashion. The notion of shipping our kupuna to the mainland  
17 merely because they are old or ill and are occupying valuable



1 space in a hospital while they are waiting for a bed to open up  
2 at a nursing home or care home is shocking.

3 We need to reverse this alarming trend of sending our local  
4 elders and citizens with disabilities to the mainland because we  
5 lack the capacity to care for them here at home. We can build,  
6 develop, and increase our capacity to care for our people in a  
7 way that preserves their dignity and allows them to reside in a  
8 community-based setting and receive care appropriate to their  
9 needs.

10 The legislature finds that on a case-by-case basis,  
11 individuals who may be subject to a transfer to a mainland  
12 facility need to be apprised of their legal rights and need to  
13 be able to consult with an advocacy agency suited to determining  
14 whether their rights are being violated or whether their needs  
15 are being met. Hawaii has a state designated protection and  
16 advocacy system that is well designed and equipped to perform  
17 this function.

18 The purpose of this Act is to ensure that the rights and  
19 needs of each individual are protected by requiring all health  
20 care facilities and health care providers to notify the state  
21 designated protection and advocacy entity or agency prior to



1 transferring any individual out-of-state to a treatment,  
2 rehabilitation, or long term care facility.

3 SECTION 2. Chapter 323, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§323- In-state long-term care. Every individual,  
7 residing in this State shall have the right to reside and  
8 receive long-term treatment in the least restrictive,  
9 individually appropriate setting within the State of Hawaii."

10 SECTION 3. Section 333F-8.5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§333F-8.5 Advocacy agency for persons with developmental**  
13 **disabilities and mental illness.** (a) The purpose of this  
14 section is to comply with federal law, which mandates the states  
15 to provide advocacy services to persons with developmental  
16 disabilities and mental illness in order to receive federal  
17 funds.

18 (b) The governor may designate an entity or agency to  
19 carry out the purposes of this section.

20 (c) The entity or agency designated by the governor shall  
21 have access to all records of any person with developmental



1 disabilities or mental illness, to the extent required by  
2 federal law.

3 (d) The entity or agency so designated by the governor  
4 shall provide those advocacy services to persons with  
5 developmental disabilities or mental illness as required by  
6 federal law. All departments and agencies of the State and the  
7 judiciary shall cooperate with the entity or agency so  
8 designated to carry out the purposes of this section.

9 (e) Prior to the transfer of any individual with a  
10 developmental disability, mental illness, or other disability to  
11 a treatment, rehabilitation, or long-term care facility located  
12 outside of the State of Hawaii, the entity proposing the  
13 transfer shall provide notice thereof to the state designated  
14 protection and advocacy system."

15 SECTION 4. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon approval.

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INTRODUCED BY:

*[Handwritten signatures: Don Brown, Michael J. Meyer, and others]*

*[Handwritten signatures: John M. Gifford, Alex W. Sun, Greg Hawkes, Mel Canoll, and others]*



**Report Title:**

Health Care; Out-of-state Transfer; Notification; Developmental Disabilities; Long-term Care

**Description:**

Requires health care facilities and providers to notify the state designated protection and advocacy entity or agency prior to transferring a patient to an out-of-state health care facility.

