

MAR 18 2009

S.R. NO. 67

SENATE RESOLUTION

URGING CONGRESS TO OPPOSE THE PROPOSED RULE AMENDMENTS PUBLISHED
ON APRIL 10, 2008 IN THE FEDERAL REGISTER (73 FED. REG.
19708) THAT IMPLEMENT THE DEVELOPMENTAL DISABILITIES
ASSISTANCE AND BILL OF RIGHTS ACT OF 2000, AND TO SUPPORT
NEW SECTIONS IN THE UPCOMING REAUTHORIZATION.

1 WHEREAS, pursuant to section 333F-8.5, Hawaii Revised
2 Statutes, the State of Hawaii has designated an entity to
3 provide advocacy services to persons with developmental
4 disabilities and mental illness; and
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6 WHEREAS, the designated advocacy service provider, direct
7 service providers, and governmental organizations provide vital
8 services to the disabled community and it is imperative that
9 entities serving this population work in cooperation with each
10 other to more effectively serve the community; and
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12 WHEREAS, the federal Developmental Disabilities Assistance
13 and Bill of Rights Act of 2000 provides wide powers and
14 discretion to the designated advocacy service provider to carry
15 out its mission but fails to provide meaningful state or local
16 oversight over these services; and
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18 WHEREAS, in 2008 the Legislature ordered a financial and
19 management audit of the designated advocacy service provider
20 based on concerns about the advocacy service's fulfillment of
21 its mission; and
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23 WHEREAS, the state agency's attempts to comprehensively
24 review the performance of the designated advocacy service
25 provider has been suspended due to vaguely worded directions
26 from current laws and the lack of sufficient criteria for
27 evaluation; and
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29 WHEREAS, designated advocacy service providers have the
30 power to advocate and protect in cases of abuse or neglect, but
31 do not have the legal power to enforce laws regarding abuse and
32 neglect; and
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1 WHEREAS, the Administration on Developmental Disabilities
2 published a notice of rule change in the Federal Register on
3 April 10, 2008 (73 Fed. Reg. 19708) proposing clarifications and
4 new requirements in implementing the Developmental Disabilities
5 Assistance and Bill of Rights Act of 2000 that would:

- 6
7 (1) Allow designated advocacy services wide discretion in
8 defining what amounts to "abuse";
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- 10 (2) Eliminate judicial review of any finding of "probable
11 cause" by designated advocacy service providers;
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- 13 (3) Reduce the power of guardians and families to review a
14 designated advocacy service provider's actions
15 involving disabled family members;
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- 17 (4) Further reduce state oversight over advocacy service
18 providers;
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- 20 (5) Allow designated advocacy service providers to
21 continue to endanger disabled persons by refusing to
22 share vital information regarding abuse and neglect
23 with state and local law enforcement agencies; and
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- 25 (6) Reduce the State's power to redesignate its advocacy
26 service provider; and
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28 WHEREAS, the Developmental Disabilities Assistance and Bill
29 of Rights Act of 2000 is scheduled for reauthorization in 2009;
30 now, therefore,
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32 BE IT RESOLVED by the Senate of the Twenty-fifth
33 Legislature of the State of Hawaii, Regular Session of 2009,
34 that this body stands opposed to the proposed amendments to the
35 Developmental Disabilities Assistance and Bill of Rights Act of
36 2000 as published on April 10, 2008 in the Federal Register (73
37 Fed. Reg. 19708), and urges Congress to oppose the same; and
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39 BE IT FURTHER RESOLVED that in the process of
40 reauthorization, the Developmental Disabilities Assistance and
41 Bill of Rights Act of 2000 should include the following:
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- 43 (1) Clear provisions for meaningful state oversight over
44 designated advocacy service providers;



- (2) Provisions providing for protocol and transparency regarding the designated advocacy service providers' oversight and investigative practices;
- (3) Provisions for compulsory cooperation by designated advocacy service providers with state agencies regarding abuse and neglect, unless a state entity is the subject of investigation; and
- (4) Provisions enumerating rights for entities that are subject to oversight by designated advocacy service providers; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to Hawaii's congressional delegation, the Governor, Director of Health, Director of Human Services, President and Majority Leader of the United States Senate, and Speaker of the United States House of Representatives.

OFFERED BY:


