

STAND. COM. REP. NO.

440

Honolulu, Hawaii

FEB 23 2009

RE: S.B. No. 190
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Human Services, to which was referred S.B. No. 190 entitled:

"A BILL FOR AN ACT RELATING TO COMMUNITY CARE FOSTER FAMILY HOME, "

begs leave to report as follows:

The purpose of this measure is to allow married couples who are not reliant on state and federal aid for medical services to reside in the same community foster family care home if each spouse is eighty years of age or older and the couple has been married for forty years or more.

Your Committee received testimony in support of this measure from the Hawaii Coalition of Caregivers; Talavera Case Management Agency; Adult Foster Home Association, Big Island Chapter; Ohana Alternative Care Service; the Policy Advisory Board for Elder Affairs, Legislative Committee; Hilo Baptist Church; New Hope Hamakua; and over three hundred individuals. The Department of Human Services and the Attorney General submitted testimony in opposition to the measure. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that community care foster family homes accept both Medicaid and private pay clients in need of long-term care. Under section 346-331, Hawaii Revised Statutes, two adults are permitted to reside in a community care foster family facility, and at least one of these adults must be a Medicaid recipient. The Department of Human Services may, in its



discretion, allow one additional resident; however, the third resident must also be a Medicaid recipient. These requirements prevent two private pay clients from residing together in a community care foster family home, even if they are married or share a similar close relationship.

Your Committee finds that the residential requirements for community care foster family homes have resulted in the separation of husbands and wives when both spouses are private pay clients. Spouses in the last phase of their life are deprived of the comfort and support of their long-time companions.

However, your Committee finds that the measure may unfairly deprive spouses who do not meet the conditions imposed by the measure or other closely related private pay couples of the benefits of living together. Further, your Committee has concerns that the measure is challengeable under the equal protection clause of the Constitution because it discriminates against private pay couples who wish to live together but who do not meet the age and marriage duration requirements.

Your Committee has amended the measure by:

- (1) Requiring the Department of Human Services to allow two private pay clients to live together in a community care foster family home, and further requiring the Department to define the relationship two private pay clients must share in order to benefit from this right within the confines of the equal protection clause;
- (2) Amending the effective date of the measure to make the measure effective upon approval;
- (3) Removing the sunset provision from the measure; and
- (4) Requiring the Department of Human Services to implement the measure within one month of its approval with interim rules, and thereafter establishing permanent rules by December 31, 2009, pursuant to chapter 91, Hawaii Revised Statutes.

As affirmed by the record of votes of the members of your Committee on Human Services that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 190, as amended herein, and recommends that it pass Second



Reading in the form attached hereto as S.B. No. 190, S.D. 1, and
be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Human Services,

Suzanne Chun Oakland
SUZANNE CHUN OAKLAND, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Human Services
HMS

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SB190</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">HMS</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">2/12/09</div>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
CHUN OAKLAND, Suzanne (C)	✓			
IHARA, Jr., Les (VC)	✓			
GREEN, M.D., Josh	✓			
HEMMINGS, Fred	✓			
TOTAL	4	0	0	0
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: <div style="font-size: 1.2em; font-family: cursive; text-align: center;">John Green</div>				
Distribution: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

***Only one measure per Record of Votes**