DAVID Y. IGE
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DIRECTOR

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LATE

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

March 24, 2015

TO: The Honorable Dee Morikawa, Chair
House Committee on Human Services

FROM: Rachael Wong, DrPH, Director

SUBJECT: **H.C.R. 107/H.R. 60 - REQUESTING THE DEPARTMENT OF HUMAN SERVICES TO CONSIDER AN ALTERNATE METHODOLOGY FOR ESTABLISHING THE BASIC PROSPECTIVE PAYMENT SYSTEM RATES FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES, TO REBASE THE RATES AT LEAST EVERY TWO FISCAL YEARS, AND TO INCREASE BED RESERVATION DAYS TO TWENTY-FOUR DAYS PER CALENDAR YEAR FOR HOSPITALIZATION AND OTHER ABSENCES OF RESIDENTS FROM INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES**

Hearing: Tuesday, March 24, 2015; 9:30 a.m.
Conference Room 329, State Capitol

**PURPOSE**: The purpose of the bill is to request the Department of Human Services to consider an alternate methodology for establishing the basic Prospective Payment System (PPS) rates for Intermediate Care Facilities for the Developmentally Disabled/Individuals with Intellectual Disabilities (DD/IID), rebasing the rate every two years, and increasing the bed hold days from twelve days to twenty-four days per year.

**DEPARTMENT'S POSITION**: The Department of Human Services (DHS) appreciates the intent of this concurrent resolution but respectfully opposes the measure as the issues contained in the

measure have been or will be addressed by DHS. The DHS asks that the legislature support the request for appropriation identified in the executive budget.

Existing DHS Hawaii Administrative Rules (HAR) detail the frequency and methodology used to determine rebase rates for DD/IID facilities. The relevant HAR provides rebasing of the PPS rates every eight years. The last rebasing of PPS rates was effective July 1, 2007; and per the administrative rules, the next rebase of the PPS rates will be effective July 1, 2015. The DOH included a $635,000 appropriation request for the rebase as part of its current executive budget request. If the frequency of rebasing is changed as proposed, it will require an additional appropriation.

The DHS HAR §17-1739.2-14 also provides for an annual inflation rate increase. In 2011, due to a budget shortfall, the Centers of Medicare and Medicaid Services (CMS) approved DHS' request to suspend the inflation rate increases effective July 1, 2011. The suspension of the inflation rate increases were for the DD/IID facilities and all long term care facilities. This fiscal year, Department of Health (DOH), which receives the appropriation for the inflation increase, paid a 1.8% increase to the DD/IID and long term care facilities.

The DHS has had discussions with the Arc in Hawaii regarding an alternate methodology and communicated the suggested methodology to the CMS. The CMS informed DHS that the offered methodology was not acceptable.

The DHS submitted a State Plan Amendment (SPA) to increase bed holds days for DD/IID facilities from twelve to twenty-four days for therapeutic days. This will allow recipients to leave the facility for extended days to, as an example, visit family on weekends or go on vacations. However, if the bed hold days are extended to include hospitalizations, this change will also require an appropriation as the State would be required to pay for the days an individual is in the hospital, as well as reimburse the DD/IID facility for those bed hold days.

Thank you for the opportunity to testify on this resolution.

**STATE OF HAWAII**
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
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March 24, 2015

The Honorable Dee Morikawa, Chair
House Committee on Human Services
Twenty-Eighth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Morikawa and Members of the Committee:

SUBJECT: HCR 107/HR 60 – REQUESTING THE DEPARTMENT OF HUMAN SERVICES TO CONSIDER AN ALTERNATE METHODOLOGY FOR ESTABLISHING THE BASIC PROSPECTIVE PAYMENT SYSTEM RATES FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES, TO REBASE THE RATES AT LEAST EVERY TWO FISCAL YEARS, AND TO INCREASE BED RESERVATION DAYS TO TWENTY-FOUR DAYS PER CALENDAR YEAR FOR HOSPITALIZATION AND OTHER ABSENCES OF RESIDENTS FROM INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

The State Council on Developmental Disabilities (DD) **SUPPORTS HCR 107/HR 60.** Last year, the 2014 Legislature adopted HCR 140, which requested the Director of Human Services to rebase the basic prospective payment system rates for intermediate care facilities for individuals with intellectual disabilities that serve Medicaid recipients to be effective July 1, 2015, and the Director of Health to include sufficient funding to cover any increase in basic payment system rates resulting from rebasing in its 2015-2017 Biennium Budget.

It is our understanding that the current basic prospective payment system rates for intermediate care facilities for individuals with intellectual disabilities (ICF/ID) were set in Fiscal Year 2008, with rebasing that became effective July 1, 2007, and were based on cost reports from providers for the base Fiscal Year ending June 30, 2005. Due to the 2012 suspension of the mandated annual inflation adjustments to the basic prospective payment system rates, providers have not had an increase in payments to keep up with inflation.

We believe that a rebasing of the prospective payment system using updated cost report data at least every two fiscal years would address the dilemma for providers to meet the financial challenges of rising costs while continuing to provide critical

services for persons with intellectual disabilities. For example, rebasing would be effective July 1, 2015, for Fiscal Year ending June 30, 2016, and using cost reports from providers from the base year ending June 30, 2013.

The Council feels that the increase in bed reservation days from 12 to 24 days is a reasonable increase to allow providers to reserve and hold a bed of a resident in an ICF/ID facility while the resident is hospitalized or on a therapeutic visit. Providers are an essential component in assisting the State in establishing a comprehensive service system that is responsive in enhancing the quality of life for persons with intellectual disabilities.

Thank you for the opportunity to provide testimony **supporting HCR 107/HR 60.**

Sincerely,

Waynette K.Y. Cabral, M.S.W.
Executive Administrator

Rosie Rowe
Chair

The Arc
in Hawaii

*Achieve with us.*

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The Arc in Hawaii
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March 24, 2015

The Honorable Dee Morikawa, Chair
The Honorable Bertrand Kobayashi, Vice Chair
Committee on Human Services
The House of Representatives
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Re: HCR 107 and HR 60 - Requesting the Department Of Human Services to Consider an Alternate Methodology for Establishing the Basic Prospective Payment System Rates For Intermediate Care Facilities For Individuals With Intellectual Disabilities and to Rebase the Basic Prospective Payment System Rates at Least Once Every Two State Fiscal Years and to Increase Bed Reservation Days to Twenty Four Per Calendar Year for Hospitalization and Other Absences From Intermediate Care Facilities For Individuals With Intellectual Disabilities.

Hearing: March 24, 2015 9:30 AM
Room # 329

Dear Chair Morikawa and Vice Chair Kobayashi and Members of the Committee;

The Arc in Hawaii **STRONGLY SUPPORTS** House Concurrent Resolution 107 and House Resolution 60, which address two critical areas which seriously impact the Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) operated by The Arc in Hawaii, The Arc of Maui and ORI.

> **Rebasing** the basic PPS rate paid to providers of ICF/IID services.
>
> Permitting providers to receive **"bed hold"** payments to reserve beds when a resident is absent from the facility at midnight **for a maximum of 24 days** per annum, **including absences for hospitalization**

The 17 ICF/IID homes operated by private, nonprofit agencies, with a maximum of 82 beds, are a vital resource for a particularly vulnerable segment of the developmentally disabled community who require a higher level of care and staffing than other residential resources. (The State also operates an ICF/IID facility at Kula Hospital, which, unlike the private operators, received an $800,000 appropriation in each of FY 2014 and 2015 on top of the fee for services received in common with the private facilities.)

**Rebasing**

ICF/IID providers are paid through Medicaid at a flat per diem rate per resident. That fee is set under the Long-Term Care Prospective Payment System, Chapter 17-1739.2 Hawaii Administrative Rules (HAR). The Department of Human Services (DHS) sets a "basic PPS rate," which is then to be supplemented by an annual inflation factor. The basic PPS rate is based upon actual costs reported by the provider for a prior "base year."

Under Section 17-1739.2-17, HAR " … a provider shall not have its basic PPS rates calculated by reference to the same base year for more than eight state fiscal years."
DHS has taken full advantage of the leeway given it under the Rule in recent decades by rebasing only every eight years. For example, the rate currently fixed was done as follows: Providers submitted cost reports based on their staffing, case load, level of care requirements and other conditions in effect in fiscal year 2005. A new basic PPS rate was established based on those factors (already two years out of date) to take effect in fiscal year 2008 and that basic PPS rate has held firm until this fiscal year.

Rebasing every eight years is a ridiculous concept. During eight years, changes in level of care for clients (as by aging and deteriorating health), prevailing wage rates, regulatory standards, best practices and other factors that are not addressed by inflation adjustments impact costs of providing services, but are ignored by the eight-year process. For example, if the condition of a fiscal year 2005 resident worsens in 2006 and the attending physician orders twenty-four hour staff monitoring, the facility may need to increase staffing. But for ten years (two years in the 2006-2007 look back period plus the eight year rebased period) those costs are not acknowledged or reimbursed.

Inflation adjustments would not reflect the change in staffing in this example. First of all, the inflation factor applied by DHS is an estimated inflation factor based upon a published "CMS Nursing Home Without Capital Market Basket", covering the whole nation. ICF/IIDs are not nursing homes and Hawaii is not representative of the whole nation. So the inflation factor not only does not address existing conditions, but it is not representative of increased costs for ICF/IIDs in Hawaii.

To make matters worse, inflation adjustments were denied in fiscal years 2012, 2013 and 2014. This drove down resources for providers, requiring cutbacks in necessary spending, which will in turn suppress the cost data to be presented for the next scheduled round of eight-year rebasing, fiscal years 2016- 2023 under DHS's present practices.

The ultimate result of these practices is to deny vital income that is rightfully earned by the providers. The State would not expect the suppliers of its pencils to sell them below cost. Why, then, should a provider of basic human needs be expected to do so for ten years on end? It is a basic proposition that those who perform services for the State must be adequately compensated to at least cover their costs while providing the level of care required by their licensing and the needs of those in their charge.

HCR 107 and HR 60 urge DHS to evaluate and consider an alternate methodology for establishing the basic PPS rates. The Arc in Hawaii believes that better methods can be implemented within existing law to correct the inadequacies and unfairness of the present system and give fair compensation to providers and, through them, the people they serve.

Implementing a practice of rebasing every two years would go a long way to resolve inequities. Changes in level of care for clients, prevailing wage rates, regulatory standards, best practices and other factors that occur after the base year would not have an eight to ten year impact upon the financial health of the provider. The PPS rate would far more truly track the actual costs of the provider.

In addition to more frequent rebasing, the DHS could allow providers to submit and justify forward looking factors (for example, the need for additional staff ) that would support a higher per diem basic PPS rate than reflected in the backward-looking prior year cost reports. The present system relies solely and blindly on out of date factors and, in truth, is retrospective, not prospective.

DHS frequently cites the difficulty of conducting a rebasing under its Rules as justification for delaying rebasing as long as possible. However, whether a rebasing is done or not, the providers must provide a cost report each and every year, and we understand that those cost reports are audited by the State each year. The complexity of the cost reporting system, which is a creation of the State, should not be an excuse to short-change providers.

**Twenty-Four "Bed Hold" Days.**

The PPS per diem rate for a ICF/IID resident is not paid to a provider if the resident is not present at midnight of a day, regardless of how much service has been provided during that day.

However, under Section 17-1739.2-23, HAR, a provider may be paid for up to 12 days per year upon which the resident is absent at the midnight deadline. This "bed hold" or bed reservation privilege is only available if the persons is absent for a reason other than hospitalization, in which case, no bed hold payment may be made.

ICF/IID bed hold policies are strictly up to the states. Based upon a 2006 survey by The Arc of the District of Columbia, Hawaii's current policy of allowing only 12 days of leave is the lowest number of days permitted in any state that has small, privately operated ICF/IIDs. The same survey reported that more than half of the states pay the ICF/IID facility during a reasonable number of days of hospitalization, with an average of 49 days per year where there is an annual limit, or 14 days in a row without an annual limit.

Until recently, DHS assumed that federal Medicaid would not pay the federal share of ICF/IID bed hold payments for hospitalization absences. However, federal authorities assured DHS that if it allowed bed hold days for hospitalization, the federal share would be payable.

DHS has recently indicated that it would increase the number of non-hospitalization bed hold days from 12 to 24 days per year (it has not done so yet). However, DHS indicated that it would continue to discriminate against residents who were hospitalized.

The Arc in Hawaii strongly supports the resolution urging DHS to adopt the 24-day bed hold leave policy and to have it apply to hospitalization absences as well as non-hospitalization purposes.

The current minimal number of leave days is absolutely inappropriate when applied to residents of an ICF/IID, and certainly inconsistent with federal regulations and all principles of active treatment, therapy, habilitation, inclusion and least restrictive alternative required by federal regulations governing ICF/IIDs. Federal ICF/IID regulations, 42 CFR § 483.420 (c) (5), mandate that ICF/IID providers "promote frequent and informal leaves from the facility for visits, trips or vacations". Hawaii's current 12 days per annum limit on leave days, when applied to ICF/IID residents, is hardly "frequent." It discourages, rather than "promotes", visits, trips or vacations.

The present restrictive bed hold policy is a hindrance to filling vacancies in the ICF/IID. Families who seek a residential alternative for their loved ones often prefer to retain some contact with the person through home visits. They are reluctant to place their family member in a facility from which the family member cannot "escape" for a reasonable time for family visits. ICF/IID vacancies present a severe financial challenge for providers, because they suffer a loss each day that a vacancy continues.

It is a fallacy that service by the ICF/IID operator ends when a client is hospitalized. Most obviously, on the day of hospitalization, the staff of the ICF/IID typically provides services to the individual, usually requiring more staff time than usual because of the health crisis they are facing. Yet under DHS's "midnight census" rule, no payment is made that day because the ICF/IID bed is empty at midnight.

The Arc fails to see any rational basis for denying bed hold days because a person is absent due to hospitalization rather than a home visit. The negative impact on the provider is the same in both cases, if not even greater in the case of hospitalization if staff must assist in the hospitalization process.

We thank you for the opportunity to testify on these important matters.

The Honorable Dee Morikawa, Chair

The Honorable Bertrand Kobayashi, Vice Chair

Committee on Human Services

The House of Representatives

State of Hawaii

Re: HCR 107 and HR 60

Hearing: March 24, 2015 9:30 AM Room # 329

Dear Chair Morikawa and Vice Chair Kobayashi and Members of the Committee;

I strongly support HCR 107 and HR 60, which address two critical areas which seriously impact the Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) operated by The Arc in Hawaii, The Arc of Maui and ORI.

> Rebasing the basic PPS rate paid to providers of ICF/IID services.
>
> Permitting providers to receive "bed hold" payments to reserve beds when a resident is absent from the facility at midnight for a maximum of 24 days per annum, including absences for hospitalization.

The services provided by The Arc in Hawaii, The Arc of Maui and ORI are a vital resource for a particularly vulnerable segment of people with intellectual disabilities who require a higher level of care and staffing than other residential resources provide. HCR107 and HR60 request the Department of Human Services to consider making changes in their current method of establishing the PPS rate, as well as in the number of days and authorized reasons for "bed hold" payments. These changes are both appropriate and necessary to ensure that the private non-profit agencies that serve people living in ICF/IID homes can continue to provide the level and consistency of care these fellow citizens of Hawaii need.

Thank you for the opportunity to submit testimony on these important matters.

Sincerely,

Becky Tyksinski

539 Kaiemi St.

Kailua, HI 96734

808-261-5088

March 20, 2015

Re: HCR 107/HR60

I would like to submit testimony as a parent of an adult son, currently in an ICF (intermediate care facility) in Honolulu. I am in support of increasing the bed reservation days to twenty-four days per calendar year for hospitalization and other absences of residents from intermediate care facilities for individuals with intellectual disabilities.

There are many different scenarios that would warrant the increase, which is currently 12 days per year. Firstly, when a person with intellectual disabilities has to move into an ICF from their home environment, the transition can be very traumatizing. In my case, having a son with autism, he was unable to understand why he was moving, and this caused many severe tantrums. Here in Hawai'i, 'ohana is very important, and having the extra days would really help individuals and families in this situation to transition and maintain relationships. Another reason is that some adults periodically need hospitalization, lessening the family days. We now no longer can take our son on vacation with us because it uses up too many days, and we try to make sure we get him extra around the holidays. In fact, just yesterday, I received a call from my son's case manager saying our son really misses us and wants to come home for a visit. However, because of the limited number of days, we will not be able to have him home for a visit for a few more weeks.

Mahalo for your consideration.

Sincerely,
Mrs. Laurie Kahiapo
PO Box 322
Waimanalo, HI 96795
gopono@gmail.com

**Edward Thompson, III**

**From:** Lambert Wai <lambertwai@yahoo.com>
**Sent:** Monday, March 23, 2015 11:43 AM
**To:** Rep. Bertrand Kobayashi
**Subject:** Fw: Resos HCR107/HR60 & HCR106/HR69

Resending
L

On Monday, March 23, 2015 9:37 AM, Lambert Wai <lambertwai@yahoo.com> wrote:

Rep Kobayashi'
I am not computer-literate enough to know how to send email testimonies to the various subject committees; so, am taking this means of letting you know that I strongly support, and am asking for your support, on these Resos that will improved the ":quality of liife" for peo[ple with Intellectual Disabilities (ID)
Lambert Wai

LATE

Thomas P Huber
46-291 Auna Street
Kaneohe HI 96744
808 235-1437

March 24, 2015

The Honorable Dee Morikawa, Chair
The Honorable Bertrand Kobayashi, Vice Chai
Committee on Human Services
The House of Representatives
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Re: HCR 107 and HR 60 -
Hearing: March 24, 2015 9:30 AM
Room # 329

Dear Chair Morikawa and Vice Chair Kobayashi and Members of the Committee;

I am the volunteer President of The Arc in Hawaii. and I **STRONGLY SUPPORT** House Concurrent Resolution 107 and House Resolution 60, concerning Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) operated by The Arc in Hawaii

There are two basic issues covered by this Resolution

**Rebasing** the basic PPS rate paid to providers of ICF/IID services.
and
Permitting providers to receive **"bed hold"** payments to reserve beds when a resident is absent from the facility at midnight **for a maximum of 24 days** per annum, **including absences for hospitalization**

As President of The Arc in Hawaii, I have been distressed by losses our agency has incurred by reason of underfunding of the 7 Intermediate Care Facilities for Individuals with Intellectual Disabilities that we operate for up to 82 persons who need extra help due to the degree of their disabilities. Part of the reason for these losses have been positions taken by the State of Hawaii with regard to funding which in fairness can be easily corrected by honoring the obligation to provide annual inflation adjustments and taking the steps requested in the first "Resolved" of HCR 107, improving the rebasing methodology.

I have also been distressed by the unduly restrictive reserved bed or "bed hold" policy referred to in the second Resolved clause, which is among the most restrictive in the nation. I have been advocating for several years for the State to liberalize the policy. The policy has not changed.

I would be happy to answer any questions you may have or to address any statement made by the Department of Health or the Department of Human Services in any testimony they may submit.

Thank you for introducing this Resolution and for hearing our concerns.