
A BILL FOR AN ACT

RELATING TO BEHAVIOR SUPPORT REVIEW COMMITTEE FOR PERSONS WITH
DEVELOPMENTAL OR INTELLECTUAL DISABILITIES.

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

1 SECTION 1. The department of health's position on behavior
2 support is to ensure that behavior interventions are implemented
3 appropriately to assist and support individuals receiving
4 services and those providing support to them. This position:

5 (1) Emphasizes positive behavior supports that promote the
6 growth, development, and independence of individuals;
7 individual choice in daily decision-making; self-
8 management; and individual responsibility for
9 behaviors;

10 (2) Provides for working with persons with challenging
11 behavior (with a focus on teaching replacement
12 behaviors that serve as the function for what the
13 individual is communicating rather than the
14 suppression or elimination of undesirable behaviors),
15 and specification of prohibited interventions; and

16 (3) Enables appropriate safeguards and oversight if
17 aversive procedures (planned or crisis) are used, with



1 planning for the eventual elimination of seclusion and
2 restraints.

3 When an individual with intellectual or developmental
4 disabilities is a danger to oneself or to others, restraints or
5 seclusion may be recommended. Before and after such methods are
6 administered, a behavior support review committee is convened to
7 evaluate such cases and make recommendations.

8 The behavior support review committee membership may
9 include a parent of an individual receiving service from the
10 department of health's developmental disabilities division, a
11 developmental disabilities division service provider who
12 provides at least two services to participants, a community
13 member with no direct involvement with the developmental
14 disabilities division's waiver provider programs, a department
15 of health facilitator with experience or training in best
16 practices to support behaviors of individuals with developmental
17 disabilities, a department of health case manager with
18 experience in supporting participants with behavior concerns,
19 and a person receiving services from the developmental
20 disabilities division.



1 The purpose of this Act is to describe the behavior support
2 review process and to provide behavior support review committee
3 members with immunity from liability.

4 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
5 amended by adding a new part to be appropriately designated and
6 to read as follows:

7 "PART . BEHAVIOR SUPPORT REVIEW COMMITTEE FOR PERSONS WITH
8 DEVELOPMENTAL OR INTELLECTUAL DISABILITIES

9 §321- Definitions. Whenever used in this part, unless
10 the context otherwise requires:

11 "Department" means the department of health.

12 "Developmental disability" shall be as defined in section
13 333F-1.

14 "Director" means the director of health or the director's
15 designated representative.

16 "Intellectual disability" shall be as defined in section
17 333F-1.

18 "Person with developmental or intellectual disabilities"
19 means a youth or an adult with a developmental or intellectual
20 disability.

21 "Restraint" means:



1 (1) Manual or physical restraint by holding a person to
2 restrict the person's freedom of movement;
3 (2) Application of a device specifically designed to
4 safely restrain or assist in restraining; or
5 (3) Chemical restraint by using a psychotropic medication
6 prescribed without the appropriate Diagnostic and
7 Statistical Manual of Mental Disorders diagnosis or
8 prescribed on an as needed basis;
9 provided that restraint does not include brief and minimally
10 restrictive physical contact in order to calm or comfort the
11 person, or holding a person's hand to safely escort the person
12 from one area to another.

13 "Seclusion" means any involuntary confinement to a room or
14 area where a person is physically prevented from leaving.

15 **§321- Behavior support review.** The department of health
16 may convene a committee to conduct multidisciplinary and
17 multiagency reviews of restraints or seclusion of persons with
18 developmental or intellectual disabilities in order to ensure
19 appropriate use and to reduce the risk of harm or death to
20 persons with developmental or intellectual disabilities.



1 **§321- Access to information.** (a) Upon written request
2 of the director, all providers of supports and state and county
3 agencies shall disclose to the department and those individuals
4 appointed by the director to participate in the behavior support
5 review committee of a person with developmental or intellectual
6 disabilities the circumstances of restraints or seclusion used
7 or to be used for a person with developmental or intellectual
8 disabilities to allow the department to conduct
9 multidisciplinary reviews of restraints or seclusion used or to
10 be used for persons with developmental or intellectual
11 disabilities pursuant to section 321-31 and this part.

12 (b) To the extent that this section conflicts with other
13 state confidentiality laws, this section shall prevail.

14 **§321- Exception.** Information regarding an ongoing civil
15 or criminal investigation shall be disclosed at the discretion
16 of the applicable state, county, or federal law enforcement
17 agency.

18 **§321- Use and review of information and records and**
19 **activities pertaining to behavior support review of persons with**
20 **developmental or intellectual disabilities.** (a) Except as
21 otherwise provided in this part, all information and records



1 acquired by the department during its multidisciplinary,
2 multiagency reviews of the restraint or seclusion of persons
3 with developmental or intellectual disabilities pursuant to this
4 part shall be kept confidential and may be disclosed only as
5 necessary to carry out the purposes of this part.

6 (b) Information and statistical compilations of data from
7 the multidisciplinary reviews of restraints or seclusion of
8 persons with developmental or intellectual disabilities that do
9 not contain any information that would permit the identification
10 of any person shall be public record.

11 (c) No individual participating in the department's
12 multidisciplinary review of the restraint or seclusion of a
13 person with developmental or intellectual disabilities shall be
14 questioned in any civil or criminal proceeding regarding
15 information presented in, or opinions formed, as a result of
16 meetings of the multidisciplinary review of restraints or
17 seclusion. Nothing in this subsection shall be construed to
18 prevent a person from testifying to information obtained
19 independently of the department's multidisciplinary behavior
20 support review, or that is public information, or where
21 disclosure is required by law or court order.



1 (d) Information held by the department as a result of a
2 multidisciplinary review of the restraint or seclusion of a
3 person with developmental or intellectual disabilities conducted
4 under this part shall not be subject to subpoena, discovery, or
5 introduction into evidence in any civil or criminal proceeding.

6 **§321- Immunity from liability.** All agencies and
7 individuals participating in multidisciplinary reviews of the
8 restraint or seclusion of persons with developmental or
9 intellectual disabilities pursuant to this part shall be immune
10 from civil or criminal liability for the use and review of
11 information and records pertaining to behavior support review of
12 persons with developmental or intellectual disabilities as
13 required under this part. All agencies and individuals
14 participating in multidisciplinary reviews or seclusions of
15 persons with developmental or intellectual disabilities pursuant
16 to this part shall be presumed to be acting in good faith and
17 shall be immune from civil liability for taking or recommending
18 actions as part of the behavior support review committee. The
19 presumption of good faith may be rebutted upon a showing by
20 preponderance of the evidence that the agency or individual



1 relied upon information or opinion that it knew was false or
2 misleading."

3 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Behavior Support Review Committee for Persons with Developmental or Intellectual Disabilities

Description:

Authorizes the department of health to establish a behavior support review process to conduct multidisciplinary reviews of the restraint or seclusion of persons with developmental or intellectual disabilities. Exempts those who participate in the reviews from liability. (SD2)

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