

JAN 23 2015

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

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

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



1 (3) Enables appropriate safeguards and oversight if
2 aversive procedures (planned or crisis) are used, with
3 planning for the eventual elimination of seclusion and
4 restraints.

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

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



1 and a person receiving services from the developmental
2 disabilities division.

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

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

9 **"PART . BEHAVIOR SUPPORT REVIEW COMMITTEE FOR PERSONS WITH**
10 **DEVELOPMENTAL OR INTELLECTUAL DISABILITIES**

11 **§321- Definitions.** Whenever used in this part, unless
12 the context otherwise requires:

13 "Department" means the department of health.

14 "Developmental disability" shall be as defined in section
15 333F-1.

16 "Director" means the director of health or the director's
17 designated representative.

18 "Intellectual disability" shall be as defined in section
19 333F-1.



1 "Person with developmental or intellectual disabilities"
2 means a youth or an adult with a developmental or intellectual
3 disability.

4 "Restraints" means:

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

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

19 **§321- Behavior support review.** The department of health
20 may convene a committee to conduct multidisciplinary and
21 multiagency reviews of restraints or seclusion of persons with



1 developmental or intellectual disabilities in order to ensure
2 appropriate use and to reduce the risk of harm or death to
3 persons with developmental or intellectual disabilities.

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

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

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



1 §321- Use and review of information and records and
2 activities pertaining to behavior support review of persons with
3 developmental or intellectual disabilities. (a) Except as
4 otherwise provided in this part, all information and records
5 acquired by the department during its multidisciplinary,
6 multiagency reviews of restraints or seclusion of persons with
7 developmental or intellectual disabilities pursuant to this part
8 shall be kept confidential and may be disclosed only as
9 necessary to carry out the purposes of this part.

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

15 (c) No individual participating in the department's
16 multidisciplinary review of the restraints or seclusion of a
17 person with developmental or intellectual disabilities shall be
18 questioned in any civil or criminal proceeding regarding
19 information presented in, or opinions formed, as a result of
20 meetings of the multidisciplinary review of restraints or
21 seclusion. Nothing in this subsection shall be construed to



1 prevent a person from testifying to information obtained
2 independently of the department's multidisciplinary behavior
3 support review, or that is public information, or where
4 disclosure is required by law or court order.

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

10 **§321- Immunity from liability.** All agencies and
11 individuals participating in multidisciplinary reviews of
12 restraints or seclusion of persons with developmental or
13 intellectual disabilities pursuant to this part shall be immune
14 from civil or criminal liability for the use and review of
15 information and records pertaining to behavior support review of
16 persons with developmental or intellectual disabilities as
17 required under this part. All agencies and individuals
18 participating in multidisciplinary reviews or seclusions of
19 persons with developmental or intellectual disabilities pursuant
20 to this part shall be presumed to be acting in good faith and
21 shall be immune from civil liability for taking or recommending



1 actions as part of the behavior support review committee. The
2 presumption of good faith may be rebutted upon a showing by
3 preponderance of the evidence that the agency or individual
4 relied upon information or opinion that it knew as false or
5 misleading."

6 SECTION 3. This Act shall take effect upon its approval.
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INTRODUCED BY: *Suzanne Chun Dahl*



Report Title:

Behavior Support Review Committee for Persons with Developmental or Intellectual Disabilities

Description:

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

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