



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in SUPPORT of S.B. 812, S.D. 2, H.D. 1
RELATING TO A BEHAVIOR SUPPORT REVIEW COMMITTEE FOR PERSONS
WITH DEVELOPMENTAL OR INTELLECTUAL DISABILITIES.**

REPRESENTATIVE KARL RHOADS
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: 03-24-15

Room Number: 325

Department's Position: The Department **strongly supports** this bill establishing a Behavior Support Review Committee for persons with developmental or intellectual disabilities.

Fiscal Implications: None.

Department Testimony: The Hawaii Department of Health's (DOH) position is that any behavior intervention is implemented safely and appropriately, and acts to assist and support individuals receiving services. The DOH is committed to ensuring that any use of restraint or seclusion is used only when there is imminent danger to an individual or others, and the use of such restrictive interventions has oversight and systematic review.

The Behavior Support Review Committee (BSRC) is required by the federal Centers for Medicare and Medicaid Services (CMS) for the Developmental Disabilities (DD) Home and Community Based Services (HCBS) Medicaid Waiver Program. The BSRC is needed to provide the necessary oversight and review to ensure appropriate and safe use of restrictive interventions. Nearly all states have incorporated laws or procedures on the use of restraints or seclusion for individuals with developmental and intellectual disabilities.

The federal HCBS Waiver requires specific committee members on the BSRC that includes DOH employees and others such as a parent of a participant of developmental disability, a DD Waiver participant, a community member, and a DD Waiver provider. Recruiting non-state employees to serve on the BSRC may be difficult, due to liability concerns. Passage of this measure will enable the DOH to implement the BSRC and provide ongoing review of restrictive interventions to ensure safety and to address any incidents of

1 inappropriate use.

2 DOH understands that there may be concern about the use and review of information and
3 records provision in Section 2, page 5, line 11 to page 6, line 19 and the immunity from liability
4 provision in Section 2, page 6, line 20 to page 7, line 4. DOH is willing to work with interested
5 parties on this measure to come up with agreeable language.

6 **Offered Amendments:** The DOH respectfully requests the following amendments:

7 (1) Changing the defective effective date of July 1, 2112 in Section 3 of the H.D. 1 to “on
8 approval”.

9 Thank you for the opportunity to testify on this measure.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
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March 24, 2015

The Honorable Karl Rhoads, Chair
House Committee on Judiciary
Twenty-Eighth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Rhoads and Members of the Committee:

SUBJECT: SB 812 SD2 HD1– Relating to Behavior Support Review
Committee for Persons with Developmental or Intellectual
Disabilities

The State Council on Developmental Disabilities (DD) **SUPPORTS SB 812 SD2 HD1**. The purpose of the bill is to authorize the Department of Health (DOH) to establish a behavioral support review process to conduct multi-disciplinary reviews of restraints or seclusion of persons with developmental or intellectual disabilities, and exempts those who participate in the reviews from liability.

The passage of this bill would add a new part to Chapter 333F to enable the DOH DD Division to facilitate a review process of the Behavioral Support Review Committee (BSRC) to review restraints and seclusion interventions for persons with DD or intellectual disabilities receiving services under the Medicaid Home and Community-Based Services Waiver program (Waiver). This is a requirement of the Waiver program. Apparently, DD Division has had difficulty meeting this requirement because individuals are reluctant to serve on the Committee due to liability concerns. The bill includes a provision that addresses immunity from liability as indicated on page 6, lines 20-21, and page 7, lines 1-4. With this provision, DD Division would be able to recruit members to serve on the BSRC and meet the Waiver program requirements.

Thank you for the opportunity to submit testimony **in support of SB 812 SD2 HD1**.

Sincerely,

A handwritten signature in black ink, appearing to read "Waynette K.Y. Cabral".

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

A handwritten signature in black ink, appearing to read "Rosie Rowe".

Rosie Rowe
Chair

LATE

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO A PART OF S.B. NO. 812
S.D.2, HD 1**

Date: Tuesday, March 24, 2015
Time: 2:00 pm

To: Chairman Karl Rhoads and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to a specific provision of S.B. No. 812 S.D.2, HD 1 Relating to Behavior Support Review Committee for Persons with Developmental or Intellectual Disabilities.

The Hawaii Association for Justice opposes the current section entitled: “Immunity from liability,” and suggests an amendment.

The function of the Behavior Support Review Committee is to assess whether, how and to what extent people with developmental or intellectual disabilities may be restrained (physically or by administration of chemicals) or confined. The consequences of decisions regarding restraint and confinement are profound and extremely serious for the disabled people who are being restrained and/or confined. There needs to be some basic protections for these people who are unable to protect their own interests because of their intellectual or developmental disabilities. HAJ recognizes that this measure is well intended and those that serve on these review committees bear a heavy responsibility for the welfare of those with intellectual or developmental disabilities and those who come in contact with these individuals; however, the needs of the committee members must be balanced with the need to protect the disabled and provide meaningful oversight of committee activities.

The changes to the immunity provision in the HD 1 has made the immunity provision more acceptable but HAJ suggests further amendments. HAJ suggest an amendment as follows:

On page 6, subsection (d) regarding use of information, that the following words be added to the end of the section on line 19 –**“unless required by court order”**.

Also, on page 7, line 4, the words “**except for gross negligence, willful or intentional conduct**” be added.

Thank you very much for allowing me to testify regarding this measure. Please feel free to contact me should you have any questions or desire additional information.