

ACT 189

S.B. NO. 1461

A Bill for an Act Relating to Developmental Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-13, Hawaii Revised Statutes, is amended to read as follows:

“§26-13 Department of health. (a) The department of health shall be headed by a single executive to be known as the director of health.

There shall be, within the department of health, an advisory board to be known as the board of health, which shall advise the director of health on matters within the jurisdiction of the department of health. The board of health shall consist of eleven voting members appointed by the governor as provided in section 26-34 and shall include the director of social services as an ex officio nonvoting member.

The appointed members shall include at least one resident of each of the major counties including the county of Kalawao. The appointed members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

The department shall administer programs designed to protect, preserve, care for, and improve the physical and mental health of the people of the State. Without limit to the generality of the foregoing, the programs shall include the administration and enforcement of matters and laws of public health of the State, including [the program for Waimano home and for] the state hospital, but excluding assistance and care for the indigent and the medically indigent.

(b) The functions and authority heretofore exercised by the board of health (excluding assistance and care for the indigent and the medically indigent) and the department of institutions with respect to [Waimano home and] the state hospital and the dental health treatment function of the department of public instruction as heretofore constituted are transferred to the department of health established by this chapter.

The governor shall define and differentiate dental health treatment from dental health instruction and shall provide for the gradual transfer of any personnel within the definition of dental health treatment to the department of health. This section shall not be construed to require the transfer from the department of education to the department of health of any dental hygienist having a teacher's certificate and employed by the department of public instruction immediately prior to November 25, 1959."

SECTION 2. Section 134-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No person who:

- (1) Is or has been under treatment or counseling for addiction to, abuse of, or dependence upon any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, or intoxicating liquor;
- (2) Has been committed pursuant to section 333F-9 or 333F-10;
- (3) (2) Has been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section 704-411; or
- (4) (3) Is or has been diagnosed as having a significant behavioral, emotional, or mental disorders as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes;

shall own, possess, or control any firearm or ammunition therefor, unless the person has been medically documented to be no longer adversely affected by the addiction, abuse, dependence, mental disease, disorder, or defect.”

SECTION 3. Section 333F-1, Hawaii Revised Statutes, is amended by amending the definition of “individually appropriate” to read as follows:

““Individually appropriate” means responsive to the needs of the person as determined through interdisciplinary assessment and provided pursuant to an individualized service plan[.] that is person-centered and community-based.”

SECTION 4. Section 333F-2, Hawaii Revised Statutes, is amended to read as follows:

“§333F-2 Developmental disabilities system. (a) The department [of health] shall develop [and], lead, administer, coordinate, monitor, evaluate, and set direction for a comprehensive system of [programs] supports and services for persons with developmental disabilities or mental retardation within the limits of state or federal resources allocated or available for the purposes of this chapter.

The department’s responsibility for persons with developmental disabilities or mental retardation [, including Waimano training school and hospital and community services,] shall be under one administrative unit for the purpose of coordination, monitoring, evaluation, and delivery of services. Not later than June 30, 1998, all programs and services falling under this chapter shall be provided in the community, including services presently provided at Waimano training school and hospital. When the private sector does not provide or is not able to provide the services, the department shall provide the services. Clients at Waimano training school and hospital shall be placed into community-based programs provided appropriate support services are available. The department shall convene a panel not later than August 1, 1995, to create a plan to provide services in the community and to ensure that the transition of Waimano training school and hospital residents to the community will be client-centered, taking into consideration the health, safety, and happiness of the residents and the concerns of their families. The panel shall consist of but not be limited to consumers, families, representatives from the private sector, employees and employee representatives, professionals, representatives of the University of Hawaii affiliate program, and representatives of the state planning council on developmental disabilities.

(b) The department [may] shall ensure the provision of an array of individually appropriate services and care to persons with developmental disabilities or mental retardation through the utilization of existing resources within the community, through coordination with [programs] supports and services provided under other federal, state, or county acts, and through specific funding when no other resources are available[.] within the limits of state and federal resources allocated or available for the purpose of this chapter. The department shall not supplant or duplicate services provided under other federal, state, or county acts.

(c) [Programs of] Supports and services the department [may] shall administer include, but shall not be limited to:

- (1) Early identification and evaluation of persons with developmental disabilities or mental retardation;
- (2) Development, planning, and implementation in coordination with other federal, state, and county agencies, of service programs for persons with developmental disabilities or mental retardation;
- (3) Development and provision of service programs in the public or private sectors through chapter 42D, for persons with developmental disabilities or mental retardation;
- (4) Establishment of a continuum of comprehensive services and residential alternatives in the community to allow persons with developmental disabilities or mental retardation to live in the least restrictive, individually appropriate environment;
- (5) Development and implementation of a program for [single entry] single-entry access by persons with developmental disabilities or mental retardation to services provided under this chapter as well as referral to, and coordination with, services provided in the private sector or under other federal, state, or county acts, [including case management,] and the development of an individualized service plan by an interdisciplinary team;

- (6) Collaborative and cooperative services with public health and other groups for programs [of prevention of] to prevent developmental disabilities or mental retardation;
- (7) Informational and educational services to the general public and to lay and professional groups;
- (8) Consultative services to the judicial branch of government, educational institutions, and health and welfare agencies whether [such] the agencies are public or private;
- (9) Provision of community residential alternatives for persons with developmental disabilities or mental retardation, including group homes and homes meeting ICF/MR standards;
- (10) Provision of care at the skilled nursing level or in a skilled nursing facility, as individually appropriate;
- [(10)] (11) Provision of other programs, services, or facilities necessary to provide a continuum of care for persons with developmental disabilities or mental retardation; [and]
- (12) Provision of case management services independent of the direct service provider; and
- [(11)] (13) Development and maintenance of respite services in the community for persons with developmental disabilities or mental retardation.

(d) Provisions for [programs] supports and services shall be limited to the amount of resources allocated or available for the purposes of this chapter.

(e) The department shall maximize its funds for community services using such funds as state matching funds for Title XIX programs, other governmental finance participation programs, and private finance programs as necessary and when possible. Only those individuals eligible for community services but not eligible for medicaid waiver services or other federally reimbursed programs or for whom such services are not appropriate or not available based on their individual service plan shall receive services and supports with one hundred per cent state funds.”

SECTION 5. Section 333F-6, Hawaii Revised Statutes, is amended to read as follows:

“[[§333F-6]] Application and assessment for services; individualized service plans. (a) The department [may develop and] shall administer an application and assessment system for persons with developmental disabilities or mental retardation[.], and shall determine eligibility for services or supports within thirty working days of receipt of an application. If the department determines that the person is eligible for services or supports under this chapter within the limits of federal or state resources available for the purposes of this chapter, the department, after due consideration is afforded the preferences of the person with developmental disabilities or mental retardation, the person’s parents if a minor, or legal guardian, shall refer that person to appropriate programs within ten working days of the determination; an individualized service plan for the person shall be prepared by an interdisciplinary team for the person, and the department may provide case management services to the person.

(b) The procedure for assessment of the person and the elements of the individualized service plan shall be [as] described in rules adopted by the department pursuant to chapter 91. The individualized service plan shall be in writing and shall include, at a minimum, the nature of the needs of the person, treatment and care goals, and specific services to be offered to the person to attain these goals.

(c) The department shall keep waiting lists of all individuals who are eligible for services and supports, but for whom services and supports have not been provided for any reason, and shall report annually to the legislature the numbers of

persons waiting for services and supports and the reasons for the lack of services and supports.”

SECTION 6. Section 333F-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§333F-7]]~~ **Provision of services.** Based upon the individualized service plan, the department [shall], as may be required, shall refer the person to services provided by the department under this chapter, to services provided under other federal or state laws, or to services provided by appropriately licensed private agencies.”

SECTION 7. Section 333F-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Persons with developmental disabilities or mental retardation shall have the following rights:

- (1) To receive the least restrictive, individually appropriate services, including a program of activities outside the residence in accordance with the person’s individualized service plan;
- (2) To reside in the least restrictive, individually appropriate residential alternative located as close as possible to the person’s home community within the State;
- (3) To the extent it is individually appropriate[,] as decided after due consideration afforded the preferences of the person with developmental disabilities or mental retardation, to:
 - (A) Interact with [nondisabled] persons without disabilities in a non-treatment, nonservice-oriented setting;
 - (B) Live with, or in close proximity to [nondisabled], persons[;] without disabilities; and
 - (C) Live in a setting which closely approximates those conditions available to [nondisabled] persons without disabilities of the same age;
- (4) To reasonable access to review medical, service, and treatment files and to be informed of diagnoses;
- (5) To participate in the development of the individualized service plan, if able to participate, or to be represented by a parent, guardian, or other representative as appropriate;
- (6) To receive a copy of the person’s individualized service plan; and
- (7) To privacy and confidentiality, to the extent possible, in connection with services provided to the person.”

SECTION 8. Section 333F-8.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§333F-8.5]]~~ **Advocacy agency for [developmentally disabled and mentally ill] persons[.]** with developmental disabilities and mental illness. (a) The purpose of this section is to comply with federal law, which mandates the states to provide advocacy services to [developmentally disabled and mentally ill] persons with developmental disabilities and mental illness in order to receive federal funds.

(b) The governor may designate an entity or agency to carry out the purposes of this section.

(c) The entity or agency designated by the governor shall have access to all records of any [developmentally disabled or mentally ill] person[,] with developmental disabilities or mental illness, to the extent required by federal law.

(d) The entity or agency so designated by the governor shall provide those advocacy services to [developmentally disabled and mentally ill] persons with developmental disabilities or mental illness as required by federal law. All departments and agencies of the State[,] and the judiciary[,] shall cooperate with the entity or agency so designated to carry out the purposes of this section.”

SECTION 9. Section 333F-13, Hawaii Revised Statutes, is amended to read as follows:

“§333F-13 Payments for care and treatment of persons receiving services; liability. A parent, guardian of the property, or other person liable for the support of any person receiving services under this chapter [may] shall be required to pay [such sums as may be determined by the department] for the care and treatment of the person. The parent or guardian of the property of a minor receiving services under this chapter shall be liable for [such] the care and treatment until the person [admitted] has reached the age of majority. The liability of a guardian of the property of a person under this section shall be limited to the estate of the ward and shall not be recoverable out of the individual assets of the guardian. Every person receiving services under this chapter and any property of the person’s estate not exempt from execution shall be liable for the expense of the person’s care and treatment. The attorney general, whenever requested by the director, shall take [such] any steps [as] that may be appropriate, by civil action if necessary, to enforce any liability established by this section. The attorney general may designate any appropriate county attorney to act in the attorney general’s behalf in any enforcement proceeding.

The department, with the approval of the governor and from the funds appropriated to the department for the care and treatment of persons with developmental disabilities or mental retardation, may transfer from time to time to the department of human services [such] any amounts [as] that may be requested by the department of human services to match federal funds available under Title XIX of the Social Security Act to assist any indigent or medically indigent persons to pay for the care and treatment of any person receiving services under this chapter. The department may expend federal funds so received for the purposes of this chapter.”

SECTION 10. Section 333F-19, Hawaii Revised Statutes, is amended to read as follows:

“[[§333F-19]] Limitation of liability. The responsibilities of the department to carry out this chapter shall be limited to the resources available to carry out [the provisions of] this chapter[,] in a prudent manner. When [such] these resources are exhausted, no action may be brought by, or on behalf of, any person or organization in any court to compel the provision of further services.”

SECTION 11. Section 333F-20, Hawaii Revised Statutes, is amended to read as follows:

“[[§333F-20]] Standards for services. The department shall require appropriate standards of services to be met by its own services or contractual services including residential, day treatment, and other related programs. These standards, [including those for intermediate care facility services in facilities for the

mentally retarded or persons with related conditions shall,] wherever applicable and appropriate, shall conform to or exceed federal standards.”

SECTION 12. Section 333F-21, Hawaii Revised Statutes, is amended to read as follows:

“**§333F-21 Provision of services; family and caregiver support.** The director [may] within the limits of state and federal resources allocated or available for the purposes of this chapter shall provide [such] any services [as] that may be necessary to maintain and enhance care giving in community-based homes for persons with developmental disabilities. For the purposes of this section, “family and caregiver support” means a flexible and varied network of support which does not supplant community resources, and which is capable of providing for the individual families caring for persons with developmental disabilities. [Such] These services may include:

- (1) In-home and out-of-home respite services for families and care providers;
- (2) The purchase of adaptive equipment such as bath chairs and special positioning chairs not covered by health insurance or other resources;
- (3) Counseling services for families of care providers concerning stresses and feelings about caring for persons with developmental disabilities;
- (4) Special supply purchases such as diapers and special clothing required by persons with developmental disabilities;
- (5) Homemaker and chore services;
- (6) Transportation services not available through existing resources in the community;
- (7) Specialized therapy services for persons with developmental disabilities not available through insurance, medicaid, or other resources;
- (8) Case management to help families and care providers coordinate and access services available to persons with developmental disabilities; and
- (9) Provision, without regard to chapter 42D, of modifications to dwelling units to enable persons with developmental disabilities with sensory limitation or mobility problems to reside in community homes which require adaptive and safety alterations such as the installation of ramps and porch lifts, bars and hand rails, widening of doorways, removal of other architectural barriers, and the enlargement of bath facilities to allow the movement [of] and ensure the safety of the person with developmental disabilities; provided that [there]:
 - (A) There shall be an agreement between the care provider and the department to ensure continued care in the home where the modification is provided; and [provided further that modification]
 - (B) Modification costs shall be limited to the amount of funds appropriated for the program for any individual client.”

SECTION 13. Section 571-50, Hawaii Revised Statutes, is amended to read as follows:

“**§571-50 Modification of decree, rehearing.** Except as otherwise provided by this chapter, any decree or order of the court may be modified at any time.

At any time during supervision of a child the court may issue notice or other appropriate process to the child if the child is of sufficient age to understand the nature of the process, to the parents, and to any other necessary parties to appear at a

hearing on a charge of violation of the terms of supervision, for any change in or modification of the decree or for discharge. The provisions of this chapter relating to process, custody, and detention at other stages of the proceeding shall be applicable.

A parent, guardian, custodian, or next friend of any child whose status has been adjudicated by the court, or any adult affected by a decree of the court, [may] at any time may petition the court for a rehearing on the ground that new evidence, which was not known or not available through the exercise of due diligence at the time of the original hearing and which might affect the decree, has been discovered. Upon a satisfactory showing of [such] this evidence, the court shall order a new hearing and make [such] any disposition of the case [as] that the facts and the best interests of the child warrant.

A parent, guardian, or next friend of a child whose legal custody has been transferred by the court to an institution, facility, agency, or person may petition the court for modification or revocation of the decree, on the ground that [such] the legal custodian has wrongfully denied application for the release of the child or has failed to act upon it within a reasonable time, or has acted in an arbitrary manner not consistent with the welfare of the child or the public interest. An institution, facility, agency, or person vested with legal custody of a child may petition the court for a renewal, modification, or revocation of the custody order on the ground that [such] the change is necessary for the welfare of the child or in the public interest. The court may dismiss the petition if on preliminary investigation it finds [it] the petition without substance. If the court is of the opinion that the decree should be reviewed, it shall conduct a hearing on notice to all parties concerned, and may enter an order continuing, modifying, or terminating the decree.

Notwithstanding the foregoing provisions of this section the court's authority with respect to the review, rehearing, renewal, modification, or revocation of decrees, judgments, or orders entered in the hereinbelow listed classes of proceedings shall be limited by any specific limitations set forth in the statutes governing [such] these proceedings or in any other specifically applicable statutes or rules. [Such] These proceedings are as follows:

- (1) Annulment, divorce, separation, and other proceedings under chapter 580;
- (2) Adoption proceedings under chapter 578;
- (3) Paternity proceedings under chapter 584;
- (4) Termination of parental rights proceedings under this chapter; and
- [(5) Waimano training school and hospital commitment proceedings under chapter 333F;
- (6) (5) State hospital commitment proceedings under chapter 334.

A decree, judgment, or order committing a child to the care of the director of [social] human services shall be reviewable under this section at the instance of others other than duly authorized representatives of [such] the department only after a lapse of thirty days following the date of the decree, judgment, or order, and thereafter only at intervals of not less than one year.

Notwithstanding this section the court shall not conduct a rehearing of any petition, filed under section 571-11(1), which, following a hearing, has been denied or dismissed.”

SECTION 14. Section 333F-4, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 333F-9, Hawaii Revised Statutes, is repealed.

SECTION 16. Section 333F-10, Hawaii Revised Statutes, is repealed.

SECTION 17. Section 333F-12, Hawaii Revised Statutes, is repealed.

SECTION 18. Section 333F-14, Hawaii Revised Statutes, is repealed.

SECTION 19. Section 333F-15, Hawaii Revised Statutes, is repealed.

SECTION 20. Section 333F-16, Hawaii Revised Statutes, is repealed.

SECTION 21. Section 560:5-312D, Hawaii Revised Statutes, is repealed.

SECTION 22. Act 178, Session Laws of Hawaii 1990, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect upon approval[, and shall be repealed on June 30, 1995].”

SECTION 23. The director of health shall cease to be guardian of persons incapacitated as defined in section 560:5-101, Hawaii Revised Statutes, or persons with developmental disabilities or mental retardation and transfer current appointee guardianships to other appropriate persons or agencies by June 30, 1998.

SECTION 24. The department of health shall submit annual reports to the legislature describing the status of the plan as developed pursuant to chapter 333F-2, Hawaii Revised Statutes, as amended no later than twenty days before the convening of the regular sessions of 1996, 1997, and 1998, and a final report in 1999.

SECTION 25. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 26. This Act shall take effect upon its approval, except that sections 1, 2, 13, 14, 15, 16, 17, 18, 19, and 20 shall take effect on June 30, 1998. The provision of case management services, as required under section 4 of this Act, shall take effect on June 30, 1996.

(Approved June 15, 1995.)

Note

1. Edited pursuant to HRS §23G-16.5.