



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 12, 2006

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

GOV. MSG. NO. 861

Dear Mr. President and Members of the Senate:

Re: House Bill No. 2098 HD1 SD1 CD1

On July 11, 2006, House Bill No. 2098, entitled "A Bill for an Act Relating to Developmental Disabilities" became law without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

The purpose of this bill is to establish a pilot project to expand the residential options of developmentally disabled or mentally retarded individuals to allow them to live in a setting of the person's choice if it is determined that "the person can be sustained with supports, the supports are attached to the person, and adequate consideration and recognition is given to the person's safety and well-being." This bill will be repealed on June 30, 2008.

This bill is problematic because the language is unclear and may create problems in implementation.

First, this bill does not state how the person's choice of residential setting is to be made and how the Department of Health (DOH) is to support the choice. Under the current system employed by the Developmental Disabilities Division (DDD) of the DOH, DDD assists clients to locate licensed or certified homes. This bill will create uncertainty over the DOH's role in selection of these residential alternatives even though State money would be spent supporting the individual.

Second, the bill does not specify how to determine whether "adequate consideration and recognition" has been given to the person's safety and well-being. This bill does not mention licensing or certification requirements, an omission that could lead to an interpretation that this amendment to section 333F-2(c) allows placement in unlicensed or uncertified homes. Allowing placement in unlicensed or uncertified homes poses a risk for the safety and well-being of persons with developmental disabilities or mental retardation because it is only through licensing or certification requirements that safety standards such as criminal history background checks of the home operator and periodic monitoring or unannounced home visits are maintained. Any

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program that purports to assist the developmentally disabled under the care of the State must include a degree of accountability within the system.

This bill will likely create problems in implementation due to the fact that many parts are vague enough to be subject to more than one interpretation. My Administration will work within the confines of this law to provide the best protection possible for State clients. However, it will be necessary to amend the law in the next legislative session to clarify the problems with this bill.

For the foregoing reasons, I allowed House Bill No. 2098 to become law as Act 303 effective July 11, 2006 without my signature.

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO DEVELOPMENTAL DISABILITIES.

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

1 SECTION 1. Section 333F-2, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Supports and services the department shall administer
4 include[~~r~~] but shall not be limited to:

5 (1) Early identification and evaluation of persons with
6 developmental disabilities or mental retardation;

7 (2) Development, planning, and implementation in
8 coordination with other federal, state, and county
9 agencies, of service programs for persons with
10 developmental disabilities or mental retardation;

11 (3) Development and provision of service programs in the
12 public or private sectors through chapter 42F or
13 [~~chapter~~] 103F, for persons with developmental
14 disabilities or mental retardation;

15 (4) Establishment of a continuum of comprehensive services
16 and residential alternatives in the community to allow
17 persons with developmental disabilities or mental



- 1 retardation to live in the least restrictive,
2 individually appropriate environment;
- 3 (5) Development and implementation of a program for
4 single-entry access by persons with developmental
5 disabilities or mental retardation to services
6 provided under this chapter as well as referral to,
7 and coordination with, services provided in the
8 private sector or under other federal, state, or
9 county acts, and the development of an individualized
10 service plan by an interdisciplinary team;
- 11 (6) Collaborative and cooperative services with public
12 health and other groups for programs to prevent
13 developmental disabilities or mental retardation;
- 14 (7) Informational and educational services to the general
15 public and to lay and professional groups;
- 16 (8) Consultative services to the judicial branch of
17 government, educational institutions, and health and
18 welfare agencies whether the agencies are public or
19 private;
- 20 (9) Provision of community residential alternatives for
21 persons with developmental disabilities or mental
22 retardation, including [~~group homes and~~] homes meeting



1 ICF/MR standards[+], and in a setting of the person's
2 choice if the person with the help of family and
3 friends, if necessary, determines that the person can
4 be sustained with supports, the supports are attached
5 to the person, and adequate consideration and
6 recognition is given to the person's safety and
7 well-being;

8 (10) Provision of care at the skilled nursing level or in a
9 skilled nursing facility, as individually appropriate;

10 (11) Provision of other programs, services, or facilities
11 necessary to provide a continuum of care for persons
12 with developmental disabilities or mental retardation;

13 (12) Provision of case management services independent of
14 the direct service provider; and

15 (13) Development and maintenance of respite services in the
16 community for persons with developmental disabilities
17 or mental retardation."

18 SECTION 2. The department of health, state council on
19 developmental disabilities shall submit a preliminary report to
20 the legislature no later than twenty days prior to the convening
21 of the regular session of 2007 and a final report no later than



1 twenty days prior to the convening of the regular session of
2 2008. The reports shall contain but not be limited to:

- 3 (1) The number of persons with developmental disabilities
4 or mental retardation who choose to live independently
5 as provided by this Act;
- 6 (2) The financial impact this Act has had on the State;
7 and
- 8 (3) Any findings and recommendations, including any
9 proposed legislation.

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

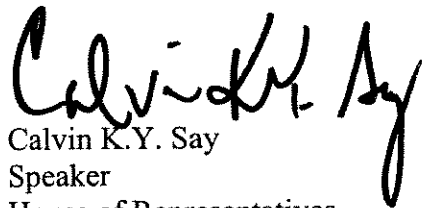
12 SECTION 4. This Act shall take effect upon its approval,
13 and shall be repealed on June 30, 2008; provided that section
14 333F-2, Hawaii Revised Statutes, shall be reenacted in the form
15 in which it read prior to this Act taking effect.

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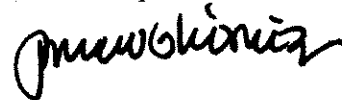
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2006
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2006.



Calvin K.Y. Say
Speaker
House of Representatives

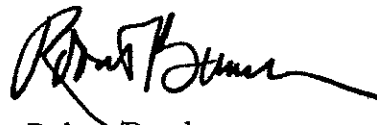


Patricia Mau-Shimizu
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: April 27, 2006
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the Senate of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2006.



Robert Bunda
President of the Senate



Paul Kawaguchi
Clerk of the Senate