
SENATE CONCURRENT RESOLUTION

REQUESTING THE HAWAII DISABILITY RIGHTS CENTER TO PROVIDE AN
ANALYSIS OF THE LAWS GOVERNING ITS ACCESS TO PATIENT
RECORDS AND ITS POLICIES AND PROCEDURES FOR CONDUCTING
INVESTIGATIONS.

1 WHEREAS, the Hawaii Disabilities Rights Center is the
2 designated agency under section 333F-8.5, Hawaii Revised
3 Statutes, to provide advocacy services to persons with
4 developmental disabilities and mental illness; and
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6 WHEREAS, a designation of an agency such as the Hawaii
7 Disabilities Rights Center is a prerequisite for the State to
8 receive federal funds; and
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10 WHEREAS, Congress created a nationwide protection and
11 advocacy system for individuals with developmental disabilities
12 under the Developmental Disabilities Assistance and Bill of
13 Rights Act, as amended, to aid individuals with developmental
14 disabilities and their families so that they may gain access to
15 appropriate support and services; and
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17 WHEREAS, the Hawaii Disabilities Rights Center has access
18 to records of any individual with a disability, to the extent
19 required by federal law and as further provided in section
20 333F-8.5, Hawaii Revised Statutes; and
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22 WHEREAS, there are also federal and state statutes, such as
23 the Health Insurance Portability and Accountability Act, which
24 were enacted to protect the privacy of patient records; and
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26 WHEREAS, providers of services to individuals with
27 disabilities may be uncertain as to their obligation to disclose
28 patient records to an entity such as the Hawaii Disability
29 Rights Center; and
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1 WHEREAS, one example of this is the current litigation
2 pending in the United States District Court for the District of
3 Hawaii between the Hawaii Disability Rights Center and the
4 Opportunities for the Retarded, Inc.; and
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6 WHEREAS, litigation between two nonprofit entities
7 dedicated to serving the needs of individuals with disabilities
8 is unfortunate and represents a loss of resources that could be
9 better spent on further their missions; and
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11 WHEREAS, the Legislature has not been presented with a
12 legal opinion that would clarify the relationship between the
13 laws mandating access to the records of an individual to a
14 protection and advocacy agency and the laws protecting the
15 privacy of that individual; now, therefore,
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17 BE IT RESOLVED by the Senate of the Twenty-fourth
18 Legislature of the State of Hawaii, Regular Session of 2007, the
19 House of Representatives concurring, that the parties to the
20 litigation between the Hawaii Disability Rights Center and
21 Opportunities for the Retarded, Inc. are urged to amicably
22 settle the pending litigation; and
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24 BE IT FURTHER RESOLVED that the Hawaii Disability Rights
25 Center is requested to submit a report to the Legislature no
26 later than twenty days prior to the convening of the Regular
27 Session of 2008; and
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29 BE IT FURTHER RESOLVED that the Hawaii Disability Rights
30 Center's report should include:
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32 (1) An outline of the federal authority that grants the
33 Hawaii Disability Rights Center access to:
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35 (A) Facilities serving individuals with disabilities;
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37 (B) Individuals with disabilities; and
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39 (C) The records of the individuals with disabilities;
40 and
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42 (2) With the concurrence of the federal Administration on
43 Developmental Disabilities, an analysis of the
44 inter-relationship between the aforementioned federal



1 authority and the laws protecting the privacy of
2 individuals and their records; and
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- 4 (3) A statement of its policies and procedures regarding
5 the manner in which it conducts investigations of
6 allegations of abuse or neglect of an individual with
7 a disability, including how, when, and under what
8 circumstances, the investigations are undertaken; and
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10 BE IT FURTHER RESOLVED that the Hawaii Disability Rights
11 Center is requested to submit a copy of the report to the
12 Attorney General, as well, no later than twenty days prior to
13 the convening of the Regular Session of 2008, so that the
14 Attorney General can offer comments to the Legislature; and
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16 BE IT FURTHER RESOLVED that certified copies of this
17 Concurrent Resolution be transmitted to the President of the
18 Hawaii Disabilities Rights Center, the President of
19 Opportunities for the Retarded, Inc., and the Attorney General.

