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## A BILL FOR AN ACT

RELATING TO AN AUDIT OF THE HAWAII DISABILITY RIGHTS CENTER.

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

1           SECTION 1. The legislature finds that Congress created a  
2 nationwide protection and advocacy system for individuals with  
3 developmental disabilities under the Developmental Disabilities  
4 Assistance and Bill of Rights Act, as amended, to aid  
5 individuals with developmental disabilities or mental illness  
6 and their families in gaining access to appropriate support and  
7 services. States are required to designate an agency or entity  
8 to provide advocacy services to persons with developmental  
9 disabilities and mental illness in order to receive federal  
10 funds for programs for these persons.

11           The legislature notes that the Hawaii Disabilities Rights  
12 Center is the agency designated under section 333F-8.5, Hawaii  
13 Revised Statutes, to provide advocacy services to persons with  
14 developmental disabilities or mental illness. Section  
15 333F-8.5(c), Hawaii Revised Statutes, grants the Hawaii  
16 Disabilities Rights Center access to all records of any person  
17 with developmental disabilities or mental illness, to the extent



1 required by federal law. However, there are also federal and  
2 state statutes, such as the Health Insurance Portability and  
3 Accountability Act, which were enacted to protect the privacy of  
4 patient records.

5 The legislature also finds that there is an ongoing dispute  
6 as to whether the law that provides the Center access to records  
7 overrides the privacy rights of persons receiving services and  
8 their families, with or without the appropriate waivers of these  
9 privacy rights, and, if so, what justification is necessary for  
10 the center to demand access to records of persons with  
11 disabilities. Providers of services to individuals with  
12 disabilities are uncertain as to their obligation to disclose  
13 patient records to an entity such as the Hawaii Disability  
14 Rights Center. Concerns have been raised about the Center's  
15 approach to resolving the conflict between a patient's right to  
16 privacy and its need for access to the patient and the patient's  
17 records.

18 The legislature also notes that the department of health  
19 has jurisdiction over state funding for the Hawaii Disability  
20 Rights Center and has responsibility for the performance of the  
21 Center. The legislature finds for purposes of this Act that the  
22 Hawaii Disabilities Rights Center is a "quasi-public



1 institution" within the scope of section 23-4, Hawaii Revised  
2 Statutes, because it is supported in whole or in part by and  
3 handles state or public funds. Although the Hawaii Disability  
4 Rights Center is therefore subject to regular audits by the  
5 auditor, it has never been audited by the auditor.

6 The purposes of this Act are to:

- 7 (1) Statutorily establish the auditor's power to examine  
8 and inspect records and documents of the entity or  
9 agency designated pursuant to section 333F-8.5, Hawaii  
10 Revised Statutes, to provide advocacy services to  
11 persons with developmental disabilities or mental  
12 illness;
- 13 (2) Require the auditor to perform a financial and  
14 management audit every seven years of the entity or  
15 agency designated pursuant to section 333F-8.5, Hawaii  
16 Revised Statutes, to ensure the protection of persons  
17 with developmental disabilities or mental illness, to  
18 ensure that state funds are being spent in accordance  
19 with applicable laws, and to make an appropriation for  
20 these purposes; and
- 21 (3) Conduct a financial and management audit of the entity  
22 or agency currently designated to provide advocacy



1 services under section 333F-8.5, Hawaii Revised  
2 Statutes.

3 SECTION 2. Section 23-5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§23-5 Auditor; powers.** (a) The auditor may examine and  
6 inspect all accounts, books, records, files, papers, and  
7 documents and all financial affairs of ~~every~~:

8 (1) Every department, office, agency, and political  
9 subdivision[-]; and

10 (2) The entity or agency designated to provide advocacy  
11 services pursuant to section 333F-8.5.

12 (b) The auditor may cause search to be made and extracts  
13 to be taken from any account, book, file, paper, record, or  
14 document in the custody of any public officer without paying any  
15 fee for the same; and every officer having the custody of the  
16 accounts, books, records, files, papers, and documents shall  
17 make such search and furnish such extracts as thereto requested.

18 (c) The auditor may issue:

19 (1) Subpoenas compelling at a specified time and place the  
20 appearance and sworn testimony of any person whom the  
21 auditor reasonably believes may be able to provide



1 information relating to any audit or other  
2 investigation undertaken pursuant to this chapter; and  
3 (2) Subpoenas duces tecum compelling the production of  
4 accounts, books, records, files, papers, documents, or  
5 other evidence, which the auditor reasonably believes  
6 may relate to an audit or other investigation being  
7 conducted under this chapter.

8 Upon application by the auditor, obedience to the subpoena may  
9 be enforced by the circuit court in the county in which the  
10 person subpoenaed resides or is found in the same manner as a  
11 subpoena issued by the clerk of the circuit court.

12 (d) Not less than once every seven-year period, the  
13 auditor shall conduct a financial and management audit of the  
14 entity or agency designated pursuant to section 333F-8.5 to  
15 provide advocacy services to persons with developmental  
16 disabilities or mental illness."

17 SECTION 3. The auditor shall submit a report of its audit  
18 to the legislature no later than twenty days prior to convening  
19 of the regular session 2009, containing findings and  
20 recommendations, including any proposed legislation, concerning  
21 the handling of state funds by the entity or agency designated  
22 to provide advocacy services pursuant to section 333F-8.5,



1 Hawaii Revised Statutes, and the entity or agency's approach to  
2 resolving conflicts between a patient's right to privacy and its  
3 need for access to the patient and the patient's records.

4 SECTION 4. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$ or so  
6 much thereof as may be necessary for fiscal year 2008-2009 for a  
7 financial and management audit of the entity or agency  
8 designated to provide advocacy services to persons with  
9 developmental disabilities or mental illness pursuant to section  
10 333F-8.5, Hawaii Revised Statutes.

11 The sum appropriated shall be expended by the auditor for  
12 the purposes of this Act.

13 SECTION 5. This Act shall take effect on July 1, 2008.



**Report Title:**

Hawaii Disability Rights Center; Audit

**Description:**

Requires the auditor to perform a financial and management audit of the entity or agency designated under section 333F-8.5, Hawaii Revised Statutes, to provide advocacy services to persons with developmental disabilities or mental illness. (HB3352 SD2)

