

---

---

# A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

1           SECTION 1. The legislature finds that a very serious issue  
2 facing our State is the lack of capacity in our community to  
3 provide adequate care in community-based residential settings.  
4 This applies not only for individuals with disabilities, but  
5 also for the vast majority of elderly individuals in need of  
6 basic medical care or assistance with activities of daily  
7 living. This lack of capacity will become even more exacerbated  
8 over time as the State's population ages. The legislature  
9 further finds that one of the unfortunate results of this lack  
10 of capacity has been a disturbing increase in the number of  
11 Hawaii residents who are discharged from hospitals or treatment  
12 facilities in the State only to be transferred to facilities  
13 out-of-state.

14           The legislature finds this practice unacceptable, because  
15 our island community has a responsibility to properly care for  
16 the elderly and disabled. The practice of transferring Hawaii's  
17 elderly or disabled out-of-state merely because they are  
18 occupying valuable space in a hospital while they are waiting



1 for a bed to become available at a nursing home or care home is  
2 shocking.

3 The legislature finds that there is an urgent need to  
4 reverse this alarming trend and determines that we can build,  
5 develop, and increase our capacity to care for our elderly and  
6 disabled in a manner that will preserve their dignity and allow  
7 them to receive appropriate care in a community-based setting.

8 The legislature finds that, on a case-by-case basis,  
9 individuals who may be subject to being transferred to an out-  
10 of-state facility should be apprised of their legal rights and  
11 should be able to consult with an advocacy agency suited to  
12 determining whether or not their rights are being violated and  
13 whether or not their needs are being met. Hawaii has a state-  
14 designated protection and advocacy system that is designed and  
15 well-equipped to perform this function.

16 The purpose of this Act is to ensure that the rights and  
17 needs of each individual are protected by requiring all health  
18 care facilities and health care providers to notify the state-  
19 designated protection and advocacy entity or agency prior to  
20 transferring any individual out-of-state to a treatment,  
21 rehabilitation, or long-term care facility.



1 SECTION 2. Section 333F-8.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§333F-8.5 Advocacy agency for persons with developmental  
4 disabilities and mental illness. (a) The purpose of this  
5 section is to comply with federal law, which mandates the states  
6 to provide advocacy services to persons with developmental  
7 disabilities and mental illness in order to receive federal  
8 funds.

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

11 (c) The entity or agency designated by the governor shall  
12 have access to all records of any person with developmental  
13 disabilities or mental illness, to the extent required by  
14 federal law.

15 (d) The entity or agency so designated by the governor  
16 shall provide those advocacy services to persons with  
17 developmental disabilities or mental illness as required by  
18 federal law. All departments and agencies of the State and the  
19 judiciary shall cooperate with the entity or agency so  
20 designated to carry out the purposes of this section.

21 (e) Prior to the transfer of an elderly individual in need  
22 of basic medical care or an individual with a developmental



1 disability, mental illness, or other disability to a treatment,  
 2 rehabilitation, or long-term care facility located outside of  
 3 the State, the entity proposing the transfer shall provide  
 4 notice to the state-designated protection and advocacy system;  
 5 provided that this subsection shall not apply to prisoners in  
 6 correctional facilities.

7 For the purposes of this subsection, "elderly" means an  
 8 individual age sixty-two or older."

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

11

INTRODUCED BY:

*John M. ...*  
*John D.C. ...*  
*J. Phil. Karamitra*  
*Tom Brower*

JAN 23 2009



**Report Title:**

Health Care; Out-of-State Transfer; Notification; Developmental Disabilities; Long-term Care

**Description:**

Requires health care facilities and providers to notify the state-designated protection and advocacy entity or agency prior to transferring an elderly or disabled patient to an out-of-state treatment, rehabilitation, or long-term care facility.

