

MAR 17 2009

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# SENATE CONCURRENT RESOLUTION

URGING CONGRESS TO OPPOSE THE PROPOSED RULE AMENDMENTS PUBLISHED ON APRIL 10, 2008 IN THE FEDERAL REGISTER (73 FED. REG. 19708) THAT IMPLEMENT THE DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000, AND TO SUPPORT NEW SECTIONS IN THE UPCOMING REAUTHORIZATION.

1 WHEREAS, pursuant to section 333F-8.5, Hawaii Revised  
2 Statutes, the State of Hawaii has designated an entity to  
3 provide advocacy services to persons with developmental  
4 disabilities and mental illness; and

5  
6 WHEREAS, the designated advocacy service provider, direct  
7 service providers, and governmental organizations provide vital  
8 services to the disabled community and it is imperative that  
9 entities serving this population work in cooperation with each  
10 other to more effectively serve the community; and

11  
12 WHEREAS, the federal Developmental Disabilities Assistance  
13 and Bill of Rights Act of 2000 provides wide powers and  
14 discretion to the designated advocacy service provider to carry  
15 out its mission but fails to provide meaningful state or local  
16 oversight over these services; and

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18 WHEREAS, in 2008 the Legislature ordered a financial and  
19 management audit of the designated advocacy service provider  
20 based on concerns about the advocacy service's fulfillment of  
21 its mission; and

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23 WHEREAS, the state agency's attempts to comprehensively  
24 review the performance of the designated advocacy service  
25 provider has been suspended due to vaguely worded directions  
26 from current laws and the lack of sufficient criteria for  
27 evaluation; and

28  
29 WHEREAS, designated advocacy service providers have the  
30 power to advocate and protect in cases of abuse or neglect, but



1 do not have the legal power to enforce laws regarding abuse and  
2 neglect; and

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4 WHEREAS, the Administration on Developmental Disabilities  
5 published a notice of rule change in the Federal Register on  
6 April 10, 2008 (73 Fed. Reg. 19708) proposing clarifications and  
7 new requirements in implementing the Developmental Disabilities  
8 Assistance and Bill of Rights Act of 2000 that would:

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- 10 (1) Allow designated advocacy services wide discretion in  
11 defining what amounts to "abuse";
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  - 13 (2) Eliminate judicial review of any finding of "probable  
14 cause" by designated advocacy service providers;
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  - 16 (3) Reduce the power of guardians and families to review a  
17 designated advocacy service provider's actions  
18 involving disabled family members;
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  - 20 (4) Further reduce state oversight over advocacy service  
21 providers;
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  - 23 (5) Allow designated advocacy service providers to  
24 continue to endanger disabled persons by refusing to  
25 share vital information regarding abuse and neglect  
26 with state and local law enforcement agencies; and  
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  - 28 (6) Reduce the State's power to redesignate its advocacy  
29 service provider; and
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31 WHEREAS, the Developmental Disabilities Assistance and Bill  
32 of Rights Act of 2000 is scheduled for reauthorization in 2009;  
33 now, therefore,

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35 BE IT RESOLVED by the Senate of the Twenty-fifth  
36 Legislature of the State of Hawaii, Regular Session of 2009, the  
37 House of Representatives concurring, that this Legislature  
38 stands opposed to the proposed amendments to the Developmental  
39 Disabilities Assistance and Bill of Rights Act of 2000 as  
40 published on April 10, 2008 in the Federal Register (73 Fed.  
41 Reg. 19708), and urges Congress to oppose the same; and  
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# S.C.R. NO. 90

1 BE IT FURTHER RESOLVED that in the process of  
 2 reauthorization, the Developmental Disabilities Assistance and  
 3 Bill of Rights Act of 2000 should include the following:

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- 5 (1) Clear provisions for meaningful state oversight over  
 6 designated advocacy service providers;
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- 8 (2) Provisions providing for protocol and transparency  
 9 regarding the designated advocacy service providers'  
 10 oversight and investigative practices;
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- 12 (3) Provisions for compulsory cooperation by designated  
 13 advocacy service providers with state agencies  
 14 regarding abuse and neglect, unless a state entity is  
 15 the subject of investigation; and
- 16
- 17 (4) Provisions enumerating rights for entities that are  
 18 subject to oversight by designated advocacy service  
 19 providers; and
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21 BE IT FURTHER RESOLVED that certified copies of this  
 22 Concurrent Resolution be transmitted to Hawaii's congressional  
 23 delegation, the Governor, Director of Health, Director of Human  
 24 Services, President and Majority Leader of the United States  
 25 Senate, and Speaker of the United States House of  
 26 Representatives.

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OFFERED BY: 





