
SENATE RESOLUTION

URGING THE UNITED STATES CONGRESS TO OPPOSE SPECIFIED PROPOSED
RULE AMENDMENTS FOR THE DEVELOPMENTAL DISABILITIES PROGRAM,
73 FED. REG. 19,708 (APRIL 10, 2008) (TO BE CODIFIED AT 45
C.F.R. PT. 1385-88) 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
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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
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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 services to the disabled; 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 attempt 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
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29 WHEREAS, designated advocacy service providers have the
30 power to advocate for and protect victims in cases of abuse or
31 neglect, but do not have the legal power to enforce laws
32 regarding abuse and neglect; and

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WHEREAS, the Administration on Developmental Disabilities published a notice of rule change in the Federal Register on April 10, 2008, 73 Fed. Reg. 19,708 (to be codified at 45 C.F.R. pt. 1385-88), proposing clarifications and new requirements in implementing the Developmental Disabilities Assistance and Bill of Rights Act of 2000 that would:

- (1) Allow designated advocacy services wide discretion in defining what amounts to "abuse";
- (2) Eliminate judicial review of any finding of "probable cause" by designated advocacy service providers;
- (3) Reduce the power of guardians and families to review a designated advocacy service provider's actions involving disabled family members;
- (4) Further reduce state oversight over advocacy service providers;
- (5) Allow designated advocacy service providers to continue to endanger disabled persons by refusing to share vital information regarding abuse and neglect with state and local law enforcement agencies; and
- (6) Reduce the State's power to redesignate its advocacy service provider; and

WHEREAS, the Developmental Disabilities Assistance and Bill of Rights Act of 2000 is scheduled for reauthorization in 2009; now, therefore,

BE IT RESOLVED by the Senate of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2009, that this body stands opposed to the following proposed amendments to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, and urges the United States Congress to oppose the same:

- (1) In Subpart B, section 1386.19, Definitions, redefining "abuse", "complaint", and "probable cause"; see Developmental Disabilities Program, 73 Fed. Reg.

- 1 19,713 (April 10, 2008) (to be codified at 45 C.F.R.
2 pt. 1386);
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- 4 (2) Redesignating and renaming section 1386.22 to 1386.25
5 to be included in a new section titled Subpart C,
6 Access to Records, Service Providers and Service
7 Recipients, and amending section 1386.25(a)(iii), as
8 redesignated; see 73 Fed. Reg. at 19,716;
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- 10 (3) Replacing section 1386.22(e) with a new section,
11 1386.28, Confidentiality of Protection and Advocacy
12 Systems Records; see 73 Fed. Reg. at 19,717; and
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- 14 (4) Revising section 1386.34, Designated State Agency; see
15 73 Fed. Reg. at 19,718; and
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17 BE IT FURTHER RESOLVED that in the process of
18 reauthorization, the Developmental Disabilities Assistance and
19 Bill of Rights Act of 2000 should include the following:

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- 21 (1) Clear provisions for meaningful state oversight over
22 designated advocacy service providers;
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- 24 (2) Provisions for protocol and transparency regarding the
25 designated advocacy service providers' oversight and
26 investigative practices;
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- 28 (3) Provisions for compulsory cooperation by designated
29 advocacy service providers with state agencies
30 regarding abuse and neglect, unless a state entity is
31 the subject of investigation; and
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- 33 (4) Provisions enumerating rights for entities that are
34 subject to oversight by designated advocacy service
35 providers; and
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37 BE IT FURTHER RESOLVED that certified copies of this
38 Resolution be transmitted to Hawaii's congressional delegation,
39 the Governor, Director of Health, Director of Human Services,
40 President and Majority Leader of the United States Senate, and
41 Speaker of the United States House of Representatives.