

SCR 90

TESTIMONY IN SUPPORT OF SCR #90

TO: Senate Committee on Human Services

FROM: Yvonne de Luna and Ronald Renshaw

RE: Senate Concurrent Resolution # 90
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.

HEARING: Thursday, April 2, 2009, 2:00 pm
Conference Room 016, State Capitol

Dear Members of the Senate Committee on Human Services:

We are submitting this testimony in support of Senate Concurrent Resolution # 90, which urges 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 (DD Act) and to support new sections in the upcoming reauthorization.

We are in favor of this resolution for several reasons:

First of all, the resolution expresses the overall sentiment and reiterates concerns raised by state legislators, government agencies, service providers, families/guardians and individuals with disabilities over the last few years with regards to current federal laws and rules applicable to state designated protection and advocacy systems. The resolution concludes that there is a need for clarification and changes to the DD Act and suggests that Congress address these concerns in their deliberation of the DD Act's reauthorization.

The April 10, 2008, proposed rule amendments to the Developmental Disabilities and Bill of Rights Act (DD Act), aimed to expand the powers of protection and advocacy agencies, which we feel could have a negative impact on the environment in which people with disabilities and their families receive services and exercise their rights. These proposed rules prompted opposition from the American Health Care Association (AHCA) together with the National Center for Assisted Living (NCAL), which make up 11,000 non-profit and for-profit long-term care providers. These proposed rules also met opposition from a national advocacy organization representing individuals with mental retardation and developmental disabilities and their families, as well as local government entities, service providers and individuals from our state.

Although the April 10, 2008, proposed rules may currently be on permanent hold due to technicalities and administration changes at the federal level, there is a concern that these rules may be revived as the DD Act is considered for reauthorization by Congress this year.

Finally, if approved, we hope this resolution will draw Congress' attention to the DD Act's impact and potential conflicts with the state's oversight authority, other state entities, service and health care providers, and the rights of individuals with disabilities and their families/guardians.

Thank you and we hope to gain your support for this resolution.

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STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
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April 2, 2009

The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services
Twenty-Fifth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Chun Oakland and Members of the Committee:

SUBJECT: SCR 90 and SR 67 – 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.

The position and views expressed in this testimony do not represent nor reflect the position and views of the Departments of Health.

The State Council on Developmental Disabilities (DD) **DOES NOT SUPPORT SCR 90 and SR 67**. The resolutions call for the Legislature to oppose the proposed amendments to the DD Assistance and Bill of Rights Act of 2000 as published on April 10, 2008 in the Federal Register (73 Fed, Reg. 19708), and urges Congress to do the same.

The Council receives funds under Title I – Subtitle B – Federal Assistance to State Councils on DD of the DD Assistance and Bill of Rights Act of 2000 (P.L. 106-402) to engage in advocacy, capacity building, and systemic change activities that assure that individuals with DD and their families participate in service and program design, and have access to needed community services. The Federal Register as noted above includes proposed amendments that clarify the role and responsibility of DD Councils, Protection and Advocacy of Individual Rights and the University Centers for Excellence in DD Education, Research, and Service (UCEDDs).

The language in the WHEREAS clause on Page 2, lines 4-29 directly relates to the protection and advocacy systems, however, the language in the BE IT RESOLVED section on Page 2, lines 35-41 is all encompassing in opposing the proposed amendments that is interpreted to be all amendments for the DD Councils, Protection and Advocacy of Individual Rights, and the UCEDDs.

The Honorable Suzanne Chun Oakland
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The proposed regulations regarding the Protection and Advocacy of Individual Rights section creates a new Subpart C that focuses on access to records, service providers and service recipients. It is our understanding that Subpart C on access to records would be consistent with regulations made for the Protection and Advocacy for Individuals with Mental Illness and the 2nd Circuit decision in "State of Connecticut Office of Protection and Advocacy for Persons with Disabilities and James McGaughey, Executive Director, State of Connecticut, Office of Protection and Advocacy for Persons with Disabilities v. Hartford Board of Education, Hartford Public Schools and Robert Henry, Supt. Of School."

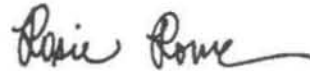
With respect to the overall contents of the resolutions, the Council defers to the Hawaii Disability Rights Center as the recipient and lead agency for the Protection and Advocacy of Individual Rights section of P.L. 106-402.

Thank you for the opportunity to submit testimony opposing SCR 90 and SR 67.

Sincerely,



Waynette K.Y. Cabral
Executive Administrator



Rosie Rowe
Chair



HAWAII DISABILITY RIGHTS CENTER

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TESTIMONY TO THE TWENTY-FIFTH STATE LEGISLATURE, 2009 SESSION

To: Senate Committee on Human Services

From: Hawaii Disability Rights Center

Re: SCR 90/SR 67

Hearing: Thursday, April 2, 2009, 2:00 PM
Conference Room 016, State Capitol

Members of the Committee on Human Services:

Thank you for the opportunity to provide testimony opposing SCR 90 and SR 67.

The Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A) is the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We oppose these Resolutions in substance and also question the spirit in which they have been offered. In addition to the numerous inaccuracies regarding the contents of the proposed regulations, it should be noted that the public comment period has expired, so that any expression of support or opposition by the Hawaii legislature would not be entered as part of the record. Furthermore, with the change in Administrations, the status of these regulations are not clear. It is not certain whether any action will even be taken on them.

We would be happy to provide the Committee with the full text of the Federal Register, containing every word of the proposed regulations as well as the official summary. We also have extensive comments submitted therein by the National Disability Rights Network. We will bring these to the Committee hearing. We would urge the Committee members to actually read the proposed regulations before passing judgment. The claims made in the "Whereas" clauses of the Resolution are simply not true. For example, there is nothing in the proposed rules to eliminate judicial review of a probable cause determination or state oversight over a protection and advocacy system. The main thrust of the proposed regulations is to codify court decisions which may have been issued regarding the authority of the P&As or to conform these Developmental Disability Regulations with those which govern the program for the Protection and Advocacy for Individuals with Mental Illness.

The regulations for these two different programs (the PADD Program and the PAIMI Program) were promulgated at different times. Courts have stated that they should be interpreted consistently. These regulations go a step further to literally conform the specific language.

Rather than provide an extensive critique of the Regulations in our testimony, we submit that if there is a particular concern regarding a specific proposal, then that should be discussed. We would be happy to participate. However, for the Committee to take the position in wholesale that the entire proposed regulations should be opposed, in our opinion, will not reflect well upon the Hawaii legislature.

Finally, we would like to comment upon the implication in these Resolutions which expresses discontent with the results of the Legislative Audit conducted pursuant to Act 127, Session Laws of Hawaii 2008. That audit concluded, "that existing audit requirements and levels of oversight over the Hawaii Disabilities Rights Center's spending of state and federal funds provide a high degree of confidence in the center's compliance with applicable laws and rules." It also concluded that on issues which involve "accessing records subject to privacy protections that other groups or individuals believe has exceeded a Protection and Advocacy agency's mandate, the courts are the more appropriate forum for setting the boundaries." For the past two legislative sessions, the Hawaii Disability Rights Center has been subject to unwarranted accusations at the legislature by officials at Opportunities for the Retarded, Inc. We had hoped that the conclusions reached by the Legislative Auditor would be accepted by members of the legislature as the definitive, final word on this subject. The conclusion reached by the Auditor is exactly the same as that to which we had testified last year. To the extent that these Resolutions appear to take issue with the result of the audit or represent an attempt to revisit the dispute between the Hawaii Disability Rights Center and ORI, we submit that such an effort is counterproductive and does not further the mutual interest both entities have in being able to move forward in their respective ways to serve individuals with disabilities.

Thank you for the opportunity to provide testimony in opposition to these Resolutions.



HAWAII'S PROTECTION AND ADVOCACY SYSTEM FOR PEOPLE WITH DISABILITIES
HAWAII'S CLIENT ASSISTANCE PROGRAM

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