



**STATE OF HAWAII**  
STATE COUNCIL  
ON DEVELOPMENTAL DISABILITIES  
919 ALA MOANA BOULEVARD, ROOM 113  
HONOLULU, HAWAII 96814  
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543  
**March 11, 2010**

The Honorable John M. Mizuno, Chair  
House Committee on Human Services  
and  
The Honorable Ryan I. Yamane, Chair  
House Committee on Health  
Twenty-Fifth Legislature  
State Capitol  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Representatives Mizuno and Yamane and Members of the Committees:

**SUBJECT: SB 2287 Proposed HD1 – RELATING TO COUNTY ZONING FOR GROUP LIVING FACILITIES**

The position and views expressed in these written comments do not represent nor reflect the position and views of the Department of Health or Department of Human Services.

The State Council on Developmental Disabilities **SUPPORTS SB 2287 Proposed HD1**. The purpose of this bill is to prohibit discriminatory treatment of the elderly and persons with disabilities in housing.

This bill would clarify that any County ordinances cannot prohibit a group living facility for the elderly and persons with disabilities from being located within any specified distance from another group living facility. It provides added protections for elderly and persons with disabilities in housing and addresses the Fair Housing Amendments Act of 1988, the 1999 Olmstead decision (Olmstead v. L.C and E.W.), and the integration mandate in Title II of the Americans with Disabilities Act (ADA) of 1990.

The Fair Housing Amendments Act of 1988 prohibits making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities. In the Olmstead decision, the Supreme Court affirmed the right of individuals with disabilities to live in their community. Under Title II of the ADA, Justice Ruth Bader Ginsburg mentioned in

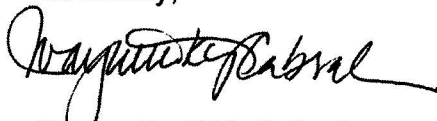
The Honorable John M. Mizuno  
The Honorable Ryan I. Yamane  
Page 2  
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his delivering the opinion of the court that "states are required to place persons with mental disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities. The 'integration mandate' of the ADA requires public agencies to provide services "in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

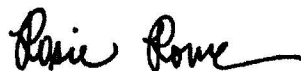
The Council endorses public policy that eliminates housing discrimination and supports elderly and persons with disabilities to live in communities of their choice. We applaud the Legislature's actions through this bill to eliminate discrimination for elderly and persons with disabilities with regard to housing options.

Thank you for the opportunity to submit testimony in **support of SB 2287 Proposed HD1.**

Sincerely,



Waynette K.Y. Cabral  
Executive Administrator

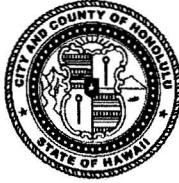


Rosie Rowe  
Chair

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813  
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MUFI HANNEMANN  
MAYOR



DAVID K. TANOUE  
DIRECTOR  
ROBERT M. SUMITOMO  
DEPUTY DIRECTOR

March 11, 2010

The Honorable John M. Mizuno, Chair  
and Members of the Committee on Human Services  
The Honorable Ryan I. Yamane, Chair  
and Members of the Committee on Health  
The House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chairs Mizuno, Yamane and Members:

**Subject: Senate Bill No. 2287, HD1 (Proposed)  
Relating County Zoning for Group Living Facilities**

The Department of Planning and Permitting (DPP) opposes Senate Bill No. 2287, HD 1, as proposed. The bill renders void as against public policy any county ordinance that prohibits a group living facility for the elderly and persons with disabilities from being located within any specific distance from another group living facility. This bill further infringes on county home rule with respect to zoning and land use.

Already, Section 46-4(d), Hawaii Revised Statutes (HRS), precludes the counties from prohibiting group living in facilities with eight or few residents, if these facilities are licensed by the State Department of Health and meet all applicable county requirements including building height, setback, maximum lot coverage, parking and floor area requirements. Thus, for zoning purposes, the City and County of Honolulu regulates the living arrangement in such facilities as a family of care recipients occupying a single-family dwelling, and not as a group living facility for the purposes of the zoning code, the Land Use Ordinance (LUO). For this category of group living facilities as already defined in the HRS, the county cannot impose any distance requirements.

Other facilities used to provide living accommodations and in some cases care services, which do not meet the LUO definition of family, are regulated as group living facilities (GLF) under the LUO and subject to a 1,000-foot minimum distance requirement from the next nearest GLF. These facilities include monasteries and convents, group homes, halfway houses, convalescent homes, nursing homes, intermediate-care or extended-care facilities, and those occupancy arrangements that do not meet the LUO definition of family. This 1,000-foot separation requirement may be waived if the facility is directly related to public health and safety.

The intent of the distance requirement is to minimize the land use impacts of a concentration of group living facilities on residential neighborhoods, especially in the single-family residential and lower density apartment zoning districts. The time may be appropriate for

The Honorable John M. Mizuno, Chair  
and Members of the Committee on Human Services  
The Honorable Ryan I. Yamane, Chair  
and Members of the Committee on Health  
The House of Representatives  
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the DPP and City Council to re-evaluate whether such a distance requirement should be imposed for GLFs in the highest density apartment districts and in the business mixed use districts. However, we believe that that the decision to impose or remove a distance requirement for group living facilities, which house a broad range of population groups, i.e., children, college students, those with religious affiliations, people newly released from prison, the elderly, people with disabilities, etc., should be set by local policy. Regardless of the composition of the population housed, GLFs of a similar size and operation tend to have similar impacts on the surrounding neighborhoods. Arguably, specifically allowing some to be exempt may be considered discriminatory by other groups, yet removing any restrictions places an unreasonable burden on our local neighborhoods as group living facilities proliferate.

We recommend the proposed HD1 to Senate Bill No. 2287 be filed. Thank you for the opportunity to testify.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. Tanoue', with a long horizontal flourish extending to the right.

David K. Tanoue, Director  
Department of Planning and Permitting

DKT: jmf  
sb2287hd1proposed-ec.doc

# COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phone/E-Mail: (808) 533-3454/[kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON HUMAN SERVICES

Rep. John Mizuno, Chair

Rep. Tom Brower, Vice Chair

## COMMITTEE ON HEALTH

Rep. Ryan Yamane, Chair

Rep. Scott Nishimoto, Vice Chair

Thursday, March 11, 2010

9:30 a.m.

Room 329

SUGGESTIONS for SB 2287 - Group Living Facilities

[HUSTestimony@capitol.hawaii.gov](mailto:HUSTestimony@capitol.hawaii.gov)

Aloha Chairs Mizuno and Yamane and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a diverse community initiative working to improve conditions of confinement for Hawai'i's incarcerated individuals, enhance the quality of justice, and promote public safety by supporting smart justice policies. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that almost 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

SB 2287 originally required counties to consider in zoning for group living facilities impacts of traffic safety and congestion, elevated noise levels, and disruption of commercial deliveries upon the residents in the surrounding area.

Although Community Alliance on Prisons understands the intent of the proposed legislation, we suggest there are better ways of dealing with the problems expressed in SB 2287. We have reviewed the proposed HD1 this bill and find that it still may have unintended consequences.

This bill presents another barrier to independent living, which is why the Department of Health has opposed regulating these homes. These facilities are not programs, they are group homes.

Community Alliance on Prisons understands the problems that neighbors have expressed. We have been told that 37 new group living facilities have recently opened, so we are sympathetic with neighbors wanting to preserve the character of their communities.

**Problems with the bill:**

- There is always tension between the state and the counties, therefore, it seems inappropriate for the state to interfere with county zoning issues.
- On O`ahu, group living facilities still have to go before Neighborhood Boards, which is legally questionable under federal laws disallowing discrimination.

Below is a summary of Specific Fair Housing and Disability Laws from **FAIR HOUSING FOR PEOPLE WITH DISABILITIES - A guidance manual for emergency shelter and transitional housing providers, February 2007, Mental Health Advocacy Services, Inc., [www.mhas-la.org](http://www.mhas-la.org):**

**Federal Fair Housing and Other Laws**  
**Protecting Housing Opportunities for People With Disabilities**

- *The Rehabilitation Act of 1973 - Section 504*
- *The Fair Housing Amendments Act of 1988*
- *The Americans with Disabilities Act (ADA) - Titles II and III*

**Suggested Remedy:**

There was another bill – SB 2805 that many opposed. At the hearing it was agreed that a task force be established to look into all the issues surrounding group living facilities and make recommendations to the state and/or counties. This bill did not cross over.

We support the recommendation of the Hawai`i Substance Abuse Coalition and many others that the Group Living Task Force:

- ❖ Define ‘independent living’ in order to determine which models fall under protection
- ❖ Get legal analyses of liability issues of subjecting certain group living facilities to public informational meetings, neighborhood board approvals, public agency oversight, and licensure that may be considered discriminatory acts to people with disabilities
- ❖ Evaluate what’s legal to regulate and ensure that such regulation is applicable to all groups of community living, including the general public.

Community Alliance on Prisons hopes that you consider these suggestions that were made by so many groups that are helping build strong and healthy communities across Hawai`i nei.

Fair housing is a right. We are Hawai`i. We care for and about each other. Let’s work together to build an inclusive community.

Mahalo for this opportunity to share our thoughts.



**CAPITOL CONSULTANTS OF HAWAII, LLP**  
**222 South Vineyard Street Suite 401, Honolulu, Hawaii 96813**  
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**Website: [www.capitolconsultantsofhawaii.com](http://www.capitolconsultantsofhawaii.com)**

March 10, 2010

Representative John M. Mizuno, Chair  
Representative Tom Brower, Vice Chair  
Committee on Human Services

Representative Ryan Yamane, Chair  
Representative Scott Y. Nishimoto, Vice Chair  
Committee on Health

**RE: SB 2287 Proposed HD 1, Relation to County Zoning for Group Living Facilities**

Dear Chair Mizuno, Vice Chair Brower, Chair Yamane, Vice Chair Nishimoto and Members of the Committee:

My name is John Radcliffe, I represent Alliance of Residential Care Administrators (ARCA) and we strongly support the proposed draft of SB 2287. First of all, the need for adult residential care homes is well known. Secondly, the only evidence that they may cause any amount of increased noise, traffic congestion, or an increase in commercial deliveries is entirely subjective, based on some individual's personal beliefs, and may even be prejudiced. I note that all of the previous testimony on the issue emanates from a few neighborhoods, all in East Oahu, where complaints about the impact of living in close proximity in single family dwellings are endemic. Traffic in Makiki, Manoa, Kaimuki and Aina Haina is very congested. There are a lot of commercial deliveries on a lot of narrow streets all the time. And whether or not adult care homes are in those neighborhoods or not, that is the case.

Singling adult care homes for disapproval, when the causes of the congestion are numerous and varied, just doesn't make sense, and appears to be illegal. One might as well try to ban multi-generational family living on those same streets and in those same neighborhoods. Furthermore when Clark County, Nevada enacted an ordinance similar to the original version of SB 2287, the U.S. District Court quickly struck it down as being discriminatory.

Because adult care homes serve an important public purpose; because there is no real evidence, other than some anecdotal talk, that they are any more or less noisy, or cause any more or less traffic congestion, or that they result in any more or less amount of commercial deliveries in our neighborhoods, and because it is illegal to discriminate against the elderly and persons with disabilities when it comes to housing, SB 2287 ought to be amended to underscore their rights.

Thank you for this opportunity to submit written comments.

Respectfully Submitted,

John H. Radcliffe  
Vice President

**For: SB2287 Relating to Zoning for Group Living Facilities** Proposed HD1: Renders void as against public policy any county ordinance that prohibits a group living facility for the elderly and persons with disabilities from being located within any specified distance from another group living facility.

COMMITTEE ON HUMAN SERVICES Rep. John Mizuno, Chair; Rep. Tom Brower, Vice Chair

COMMITTEE ON HEALTH Rep. Ryan Yamane, Chair; Rep. Scott Nishimoto, Vice Chair

Date: Thursday, March 11, 2010 at 9:30 at Room 329

## **Hawaii Substance Abuse Coalition (HSAC)**

Aloha, Chair Mizuno, Chair Yamane and Distinguished Members. My name is Alan Johnson, Chairperson of the Hawaii Substance Abuse Coalition, which is a hui of 22 treatment agencies throughout the state.

Many group living homes are generally considered independent living because the key components include “no conditions of tenancy that exceed the normal conditions under which any leaseholder would be subject.”<sup>1</sup> HSAC agrees that there are group living homes that are in violation of permitting processes and agrees that the community issues for some housing situations involve parking, noise and traffic issues. However, the laws to protect those with disabilities are becoming more strictly enforced presenting considerable potential liabilities. We need a solution that has appropriate regulations in order to avert potential liabilities, especially during these difficult economic times.

### **HSAC opposes SB 2287 and has a recommendation:**

**Legalities:** In addition to Federal Fair Housing and Other Laws Protecting Housing Opportunities for People with Disabilities, two additional federal laws that may apply to emergency shelters and transitional housing are Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, Titles II and III.<sup>1</sup>

Before implementing any legislation, we recommend that legislators be aware of the legalities on how the laws to protect individuals with disabilities are applied. For the last thirty years, federal and state laws have created increasingly protective measures to safeguard equal access to housing for people with disabilities, including changes in rules, policies or procedures to help people with disabilities access housing or housing-related services.

Being subject to public informational meetings and/or neighborhood board approvals as well as licensure may be considered discriminatory acts that limit access for housing to people with disabilities and consequently are in violation of these Federal laws.

For instance, group living homes for those with protected disabilities are exempt from single-family zoning requirements. This immunity comes from a 1995 U.S. Supreme Court decision that found that the Fair Housing Act protects those with disabilities from rental discrimination. Group living homes may be considered independent living and



because they do not receive government assistance, so no public agency may oversee their operation.

**Neighborhood Concerns:** While there are well-managed group living homes, there are several who are not. Compounding this issue is that numerous housing rentals are starting because of the rental capacity and profitability. There are literally thousands of individuals in recovery in Hawaii seeking such housing in recent years due to improved treatment access and the reduction in stigma. According to the DOH: ADAD surveys, over 100,000 people in Hawaii need substance use disorder treatment.<sup>2</sup>

Group living homes that are not well operated by landlords have neighbors worried. The biggest issues seem to be parking, traffic and noise concerns. Neighbors complain that there are neither rules nor anyone investigating them. There's no apparent accountability for the landlords.

On the other hand, proponents of group living homes question the legality of any regulations. Many cities throughout the country have tried to implement regulations on group living homes, only to see them struck down in court. As the laws currently stand, people in recovery are people with disabilities and they have the same right to live in single-family zones as anyone else. Considering current federal laws, the state may not have the authority enforce this bill.

We clearly need a solution that is fair to both sides as well as legal.

**Recommendation:** Create a task force to research legalities, other state's responses, neighborhood concerns, and providers' issues to result in appropriate legislation with regulations that are legal.

### **Summary:**

One thing for certain is that more and more people with disabilities are going to seek group living homes. And landlords are receptive due to the rental potentials.

We need a balance between those seeking to reenter their communities of choice with the needs of their neighbors to enjoy peaceful neighborhoods. Given the legal concerns, this bill would not accomplish that.

We appreciate the opportunity to testify and are available for testimony.

### **References:**

- 1) Mental Health Advocacy Services, Inc., *FAIR HOUSING FOR PEOPLE WITH DISABILITIES: A guidance manual for emergency shelter and transitional housing providers* February 2007  
<http://www.mhas-la.org/FH%20Manual%20rev.4-07.pdf>
- 2) Department of Health: Alcohol and Drug Abuse Division: *Alcohol and Other Drug Use in Hawai'i – Surveys*, <http://hawaii.gov/health/substance-abuse/prevention-treatment/survey/adsurv.htm>

House Committee on HUS/HTH  
March 11, 2010 9:30 AM  
SB 2287 - Group Living Homes  
Testimony in Support – Miriam Tabaniag.

Chairs Mizuno and Yamane and Vice Chairs Brower and Nishimoto and members of the Human Services and Health committees.

My name is Miriam Tabaniag representing the Care home industry and elderly and disabled residents and the president of Alliance of Residential Care home Administrators who represents thousand of Care home Administrators and Elderly in Hawaii.

Hawaii's constitution prohibits discrimination based on age and this bill will put Hawaii in compliance with the Federal Law and the Hawaii constitution. The U.S. district court ruled that the Clark county ordinance that required minimum distance between care homes where elderly and disabled person live is void as against public policy. The Federal Court found and in violation of the Federal Fair Housing Law that prohibits such blatant discrimination against society most vulnerable citizens.

The Federal court opined that Elderly and disabled may not be treated any differently from an abled-bodied, non-elderly person.

The purpose of the bill is to bring Hawaii's law into alignment with the U.S. Federal Fair Housing Act that prohibits such discrimination against the disabled and elderly. In a precedent setting Federal Court Case, the U.S. district court struck down a Clark County Nevada ordinance that required a minimum distance between care houses where elderly and disabled persons live.

To allow counties to discriminate against society most vulnerable voters, the elderly and disabled should be deemed offensive to every elder, disabled and decent minded person in Hawaii. The State of Hawaii must correct this situation to avoid a Federal Lawsuit and liability for court costs and attorneys fees of the Federal government.

The City and County of Honolulu ordinance that likens old folks' homes to that of a residence that houses sex abusers, drug addicts, and ex-cons, should not only be redefined, but is extremely offensive.

To classify elderly care home operations as possessing the same risk factor upon a neighborhood in equal proportion to those group homes that shelter recovering heroin addicts, rapists, or car thieves is both archaic and counterproductive when you factor that 25% of our population by 2020 will be of an old age merely in need of elderly care. We all will get some and should by any chance be treated as convicts for being old.

I personally want elders "in my back yard." I would give anything to have the convenience to turn off my television set and walk across the street to hear war stories and about the times when everyone in a "neighborhood" actually trusted and looked out for one another.

This bill if passed into law would permit our elders to capture their final breaths in the neighborhoods they so choose. There would be no discrimination, restrictions, or prohibitions upon those that just get old and have sought to share that experience collectively with others to save costs. Thank you for allowing me to testify.

# ADULT FOSTER HOMECARE ASSOCIATION

P.O. Box 2441, Honolulu, Hawai'i 96804

March 10, 2010

Lani Akee  
President

Testimony in **STRONG SUPPORT of SB 2287 – HUS/HLT – 3/11/10, 9:30 a.m., Rm. 329**

Chairs Mizuno and Yamane, and Members of the Joint Committee:

The Adult Foster HomeCare Association (AFHA) **strongly supports SB2287** that renders void as against public policy any county ordinance that prohibits a group living facility for the elderly and persons with disabilities from being located within any specified distance from another group living facility.

AFHA requests your support for the industry. As Hawaii's population ages, home and community programs need your support. Adult care homes and community care foster homes allow our kupuna to maintain their dignity in the twilight of their lives. Our industry also saves taxpayers millions of dollars as we have the lowest reimbursement rates for 24/7 care.

Many communities have embraced what we do for the elderly and disabled. Almost all of our members operate their homes without incident.

In summary, AFHA reiterates its **strong support of SB2287**.

Very truly yours,

The Primary Care Providers (TPCP)

By: Maria Etrata

## About TPCP

TPCP's mission is unite the home and community based care giving industry to improve the quality of care provided to elderly and developmentally disabled clients in various home and community based programs, as well as to improve the state of the industry. Together, members of the four organizations have a membership of about 500 and comprise about 35% of the home and community-based caregivers in the State of Hawaii.

## **HAWAII DISABILITY RIGHTS CENTER**

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

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### **THE HOUSE OF REPRESENTATIVES THE TWENTY-FIFTH LEGISLATURE REGULAR SESSION OF 2010**

**Committee on Human Services**

**Committee on Health**

**Testimony On S.B 2287, Proposed HD1**

**Relating to County Zoning For Group Living Facilities**

**Thursday, March 11, 2010, 9:30 A.M.**

**Conference Room 329**

Chair Mizuno, Chair Yamane and Members of the Committees:

I am Louis Erteschik, Staff Attorney at the Hawaii Disability Rights Center, and am testifying to offer comments on this bill.

We support this proposed HD1 and certainly feel it is preferable to the Senate bill as received by the House.

If we are to achieve the capacity to care for our elderly and disabled, then it is essential that we have the ability to find and site suitable residential settings that are not limited to the few communities that have accepted care homes in the past. The legislature is well aware of the need to care for an ever increasing aging population. Additionally, the Olmstead decision of the US Supreme Court mandates that individuals with disabilities be able to reside in community based, integrated settings. As the number of all these individuals increases, locating residences will become even more important.

We were concerned that the amendments proposed in this original bill could have been utilized to deny permits to such facilities based on discrimination as opposed to lawful land use criteria. The current zoning laws provide that these are allowable uses so long as they conform to other typical zoning requirements such as lot size and setback and building height. These are clearly defined and easily measurable criteria by which a permit can be approved or disapproved.

The addition of less measureable factors creates a potential that permits may be denied simply because residents in the immediate vicinity do not welcome their new neighbors. Not only would this be wrong and inappropriate from a public policy point of view. It could also lead to decisions that violate federal anti discrimination laws such as the ADA and the Fair Housing Act.

We prefer the approach adopted in this proposed HD1 which affirmatively supports the ability of group living facilities to be appropriately sited. Ordinances which prevent such facilities within a certain proximity of each other can similarly be utilized in unfair ways to prevent the needed integration of individuals with disabilities into our communities.

Thank you for the opportunity to testify on this measure.

**From:** FAJOTINACAREHOME@aol.com [mailto:FAJOTINACAREHOME@aol.com]

**Sent:** Wednesday, March 10, 2010 5:04 PM

**To:** HUS testimony

**Subject:** testing

Lilia Fajotina  
Care Home Operator  
ARCA ( Alliance of Residential Care Administrators)  
94-438 Hoaeae St.  
Waipahu, Hi 96797  
Tel. 676-7399

My name is Lilia Fajotina owner and care home operator, I strongly support HB 2287, because I strongly believe it would be discrimination for the elderly, the physically and mentally challenge. It is their choice and rights where they want to leave. Some are talking about the noise and traffic regarding the deliveries to the home this will not happening everyday, maybe once a month. And also, family visit mostly once a week over the weekend and they will not come at one time.

Thank you for giving me the opportunity to testify.

Sincerely,

Lilia Fajotina  
Care Home Operator