
From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 31, 2011 12:09 PM
To: HSGtestimony
Cc: manis1350@gmail.com
Subject: Testimony for HB643 on 2/2/2011 8:30:00 AM

Testimony for HSG 2/2/2011 8:30:00 AM HB643

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Laura Manis
Organization: Individual
Address: 1350 Ala Moana Blvd
Phone: 808 597-8838
E-mail: manis1350@gmail.com
Submitted on: 1/31/2011

Comments:

I believe this bill is very important because it begins to address a serious problem as our population grows older and increasingly move to condos. My condo has already experienced residents dying unknown and unattended. Some questions need to be worked out: financial responsibility, supervision, frequency, etc. Let's get the planning started. I congratulate you on your foresight.

From: Tony Lenzer [Tlenzer@hawaii.rr.com]
Sent: Saturday, January 29, 2011 9:14 AM
To: HSGtestimony
Subject: HB 643

Representative Cabanilla and Members of the Committee:

My name is Anthony Lenzer. I am a member of several senior advocacy organizations, and am the former Director of the Center on Aging at the University of Hawaii at Manoa. I am testifying as an individual in support of HB 643. This bill is designed to facilitate the assessment of elderly or disabled individuals living in condominiums who may have significant health problems which are not being addressed. The bill provides for the Condominium Board to employ a nurse to make such assessments and recommend treatment or services for such individuals, on behalf of the Board, but without creating legal liability for the Board.

The following questions occur to me regarding this Bill, which may require clarification: (1) is there to be a charge for such assessments, and, if so, who pays? (2) do residents have a right to refuse such assessments, even if their situation is seen by the Board as as dangerous to themselves or other residents? (3) in this situation, what are the consequences if the resident refuses to be evaluated?

This bill is an important step towards reaching the thousands of elderly and disabled condominium residents who have undiagnosed and/or untreated health problems, many of whom live in isolation from others who might provide assistance. Please give HB 643 favorable consideration, and thank you for the opportunity to testify on this matter.

Anthony Lenzer, Ph.D.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 1:48 PM
To: HSGtestimony
Cc: jdodson@ebgca.net
Subject: Testimony for HB643 on 2/2/2011 8:30:00 AM

Testimony for HSG 2/2/2011 8:30:00 AM HB643

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Jim Dodson
Organization: Ewa by Gentry Community Association
Address: 91-1795 Keaunui Drive Ewa Beach, HI 96706
Phone: 808 685-0111
E-mail: jdodson@ebgca.net
Submitted on: 2/1/2011

Comments:

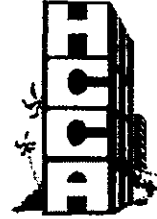
If the legislature will allow any 501c non profit to become a 501(c)3 corporation, then this may benefit each common interest development. As it currently stands, each board must investigate (due diligence) and consult with professionals before engaging in any activity not provided for in CC&R's and justify that to the membership. The liability here far outweighs the risks to the community.



**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations

P.O. Box 726, Aiea, HI, 96701

Tel: 485-8282 Fax: 485-8288 HCAAO@hawaii.rr.com



January 31, 2011

Rep. Rida Cabanilla, Chair
Rep. Pono Chong, Vice-Chair
House Committee on Housing

Re: HB 643 Relating to Condominiums (employment of nurse]
Hearing: Wednesday, Feb. 2, 2011, 8:30 a.m., Conf. Rm. #325

Chair Cabanilla, Vice-Chair Chong and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

HCAAO was the proponent of the "aging in place" section of the condominium law and we oppose this bill for the following reasons:

1. It is not the function of the association to provide medical or health care services to their residents. It is the resident's responsibility to contract and pay for those services. Under the current "aging in place" section of the condominium statute, that is exactly what happens when the association requests a functional assessment regarding the condition of an elderly or disabled unit owner. Although the functional assessment is requested by the association, the unit owner and not the association pays for that service and the assessment determines whether or not the owner need medical or health care services that can be provided by a nurse. In that case, the case worker arranges for that service and the owner' pays for it.
2. The purpose and intent of the "aging in place" section of the condominium law was to provide assistance to those elderly and disabled residents who are without a support system of family or friends. In cases where such residents are in need of assistance, this law allows the association to arrange for services to be provided to the resident at their cost and not at the cost of the association.
3. There is no provision in the condominium documents, i.e., the Declaration or the By-Laws, that would allow an association to expend common funds to hire a nurse who would be providing services to less than all of the owners

and such a Declaration change would require 67 ½ % written consent of the unit owners.

4. The cost of insurance to the association would increase (and the cost would be passed on to all of the unit owners pro-rata) if it were to hire a nurse since then it would have to have medical malpractice or errors and omissions coverage in addition to coverage for property damages, fire, flood, liability, fidelity, workers comp, TDI and officers and directors liability.
5. Notwithstanding the language of the bill, if the association were to employ a nurse, there is no way that it could avoid liability if that employee caused harm to a resident while rendering medical or health care services. "*Respondeat Superior*" is a commonlaw doctrine that makes an employer liable for the actions of an employee when the actions take place within the scope of employment. Without requiring an express written waiver from the resident that is being cared for, I don't believe that this legislature can authorize a waiver of liability for the association in those circumstances.

For these and other reasons, I ask that you defer action on this bill.

Thank you for the opportunity to testify.


Jane Sugimura
President