

JAN 25 2012

A BILL FOR AN ACT

RELATING TO MORTALITY REVIEW OF DEATHS OF PERSONS WITH
DEVELOPMENTAL OR INTELLECTUAL DISABILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 321, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . MORTALITY REVIEW OF DEATHS OF PERSONS WITH
5 DEVELOPMENTAL OR INTELLECTUAL DISABILITIES

6 §321-Multidisciplinary and multiagency mortality reviews.

7 The department of health may conduct multidisciplinary and
8 multiagency mortality review of deaths of persons with
9 developmental or intellectual disabilities in order to reduce
10 the incidence of preventable deaths to persons with
11 developmental or intellectual disabilities.

12 §321-Definitions. As used in this part:

13 "Adult" means a person over seventeen years of age.

14 "Adult death review information" means information
15 regarding the adult person and person's family, including but
16 not limited to:

17 (1) Social, medical, and legal histories;

18 (2) Death and birth certificates;

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- 1 (3) Law enforcement investigative data;
- 2 (4) Medical examiner or coroner investigative data;
- 3 (5) Parole and probation information and records;
- 4 (6) Information and records of social service agencies;
- 5 (7) Educational records; and
- 6 (8) Health care institution information.

7 "Department" means the department of health.

8 "Developmental disability" means a severe, chronic
9 disability of a person that:

- 10 (1) Is attributable to a mental or physical impairment or
11 combination of mental and physical impairments;
- 12 (2) Is manifested before the person attains age twenty-
13 two;
- 14 (3) Is likely to continue indefinitely;
- 15 (4) Results in substantial functional limitations in three
16 or more of the following areas of major life activity:
17 self-care, receptive and expressive language,
18 learning, mobility, self-direction, capacity for
19 independent living, and economic self-sufficiency; and
- 20 (5) Reflects the person's need for a combination and
21 sequence of special, interdisciplinary, or generic
22 care, treatment, or other services which are of

1 lifelong or extended duration and are individually
2 planned and coordinated.

3 "Director" means the director of health or the director's
4 designated representative.

5 "Disabled person" means an adult with a developmental or
6 intellectual disability.

7 "Intellectual Disability" means significantly subaverage
8 general intellectual functioning resulting in or associated with
9 concurrent moderate, severe, or profound impairments in adaptive
10 behavior and manifested during the developmental period.

11 "Preventable death" means a death that reasonable medical,
12 social, legal, psychological, or educational intervention may
13 have prevented.

14 "Provider of medical care" means any health care
15 practitioner who provides, or a facility through which is
16 provided, any medical evaluation or treatment, including dental
17 and mental health evaluation or treatment.

18 **§321-Access to information.** (a) Upon written request of the
19 director, all providers of medical care or other services, and
20 state and county agencies shall disclose to the department, and
21 those individuals appointed by the director to participate in
22 the mortality review of a death of a person with developmental

1 or intellectual disabilities, adult death review information
2 regarding the circumstances of a death of a person with
3 developmental or intellectual disabilities so that the
4 department may conduct multidisciplinary and multiagency
5 mortality review of deaths of persons with developmental or
6 intellectual disabilities pursuant to section 321-31 and this
7 part.

8 (b) To the extent that this section conflicts with other
9 state confidentiality laws, this section shall prevail.

10 **§321-Exception.** Information regarding an ongoing civil or
11 criminal investigation shall be disclosed at the discretion of
12 the applicable state, county, or federal law enforcement agency.

13 **§321-Use of information and records from mortality reviews**
14 **of deaths of persons with developmental or intellectual**
15 **disabilities.** (a) Except as otherwise provided in this part,
16 all information and records acquired by the department during
17 its multidisciplinary and multiagency mortality reviews of
18 deaths of persons with developmental or intellectual
19 disabilities pursuant to this part is confidential and may be
20 disclosed only as necessary to carry out the purposes of this
21 part.

1 (b) Information and statistical compilations of data from
2 the multidisciplinary and multiagency mortality reviews of
3 deaths of persons with developmental or intellectual
4 disabilities that do not contain any information that would
5 permit the identification of any person shall be public records.

6 (c) No individual participating in the department's
7 multidisciplinary and multiagency mortality review of a death of
8 a person with developmental or intellectual disabilities may be
9 questioned in any civil or criminal proceeding regarding
10 information presented in or opinions formed as a result of a
11 meeting of the multidisciplinary and multiagency mortality
12 review of deaths of persons with developmental or intellectual
13 disabilities. Nothing in this subsection shall be construed to
14 prevent a person from testifying to information obtained
15 independently of the department's multidisciplinary and
16 multiagency mortality review of deaths of persons with
17 developmental or intellectual disabilities, or which is public
18 information, or where disclosure is required by law or court
19 order.

20 (d) Information held by the department as a result of a
21 multidisciplinary and multiagency mortality review of a death of
22 a person with developmental or intellectual disabilities

Report Title:

Mortality Review for Persons with Developmental or Intellectual Disabilities

Description:

Creates a new part in chapter 321, Hawaii Revised Statutes, giving the Department of Health the authority to obtain all records for death review for persons with developmental or intellectual disabilities.

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO MORTALITY REVIEW OF DEATHS OF PERSONS WITH DEVELOPMENTAL OR INTELLECTUAL DISABILITIES.

PURPOSE: To provide the Department of Health legal means to obtain clinical and other information surrounding the deaths of persons with developmental or intellectual disabilities and to conduct multidisciplinary and multiagency mortality reviews of deaths of persons with developmental and intellectual disabilities in order to reduce the incidence of preventable deaths to persons served by Developmental Disabilities Division.

MEANS: Add a new part to chapter 321, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 333F-2, HRS, relating to the developmental disabilities system, requires the department "to develop, lead, administer, coordinate, monitor, evaluate, and set direction for a comprehensive system of supports and services for persons with developmental [or intellectual disabilities] within the limits of state or federal resources allocated or available for the purposes of [the] chapter." A critical component of monitoring and evaluating the developmental disabilities system is to conduct mortality review of the deaths of all adults who die while being served by the department. A report, "Medicaid Home and Community-Based Waivers: CMS Should Encourage States to Conduct Mortality Reviews for Individuals with Developmental Disabilities" by the Government Accountability Office, GAO-08-529, dated May 23, 2008, and released on July 1, 2008,

formally recommends that the Centers for Medicare and Medicaid Services (CMS) encourages states to include death as a critical incident and conduct mortality reviews if they do not already do so and broaden their mortality review processes if they already include death as a critical incident and conduct mortality reviews. This bill will assist the Department to improve the quality of its reviews through access to needed records.

Impact on the public: This bill would help reassure the public that any deaths of these individuals are investigated to implement actions to address issues that may have contributed to any deaths. Additionally, this bill contains language that protects the confidentiality of information obtained by the department to conduct a mortality review. Lastly, the bill also provides immunity from liability for individuals and agencies participating in the mortality review of persons with developmental and intellectual disabilities.

Impact on the department and other agencies: Currently Developmental Disabilities Division staff conduct mortality reviews of deaths of persons with developmental and intellectual disabilities but are unable to obtain information from providers, hospitals, and other agencies to use in the review of deaths. This legislation would decrease those barriers in the same way that is available for Child Death Review in Hawaii, pursuant to chapter 321, part XXVII, HRS.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: 050305

OTHER AFFECTED

AGENCIES: DHS, JUD

EFFECTIVE DATE: Upon approval.