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**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1140, RELATING TO HEALTH CARE.

**BEFORE THE:**

SENATE COMMITTEES ON HUMAN SERVICES AND ON HEALTH

**DATE:** Thursday, February 10, 2011 **TIME:** 1:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Jill T. Nagamine, Deputy Attorney General

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Chairs Chun Oakland and Green and Members of the Committees:

The Attorney General opposes this bill.

The intent of this bill is to require that notice be given to the state-designated protection and advocacy entity or agency, prior to any out-of-state transfers of elderly individuals or people with developmental disabilities, mental illness, or other disabilities ("Patients"), excluding prisoners, to treatment, rehabilitation, or long-term care facilities. The bill points to the urgent need to build, develop, and increase our capacity to care for our elderly and disabled.

First, individuals have a right to privacy in their personal health information under article I, section 6 of the Hawaii constitution and under the Health Insurance Portability and Accountability Act of 1996. Automatic disclosure in this situation to an advocacy agency or any other entity without the individual's authorization violates those rights. Affected individuals and their families may, in fact, prefer that the advocacy agency **not** be notified of a person's impending transfer.

Second, we do not believe that transferring individuals to appropriate facilities on the mainland where they can receive the care they need is per se a violation of their rights. Without a