



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Judiciary

**H.B. 2302, H.D. 1, Relating to
Behavioral Support Review of Restraints and Seclusion**

**Testimony of Lynn N. Fallin
Deputy Director, Behavioral Health Administration**

February 21, 2014

1 **Department's Position:** The Department strongly supports H.B. 2302, H.D. 1, relating to Behavioral
2 Support Review of Restraints and Seclusion.

3 **Fiscal Implications:** None.

4 **Purpose and Justification:**

5 People with intellectual and developmental disabilities are vulnerable because they often cannot
6 communicate to someone that they are being abused. Abuses include being restrained, secluded, or
7 given psychotropic medication to make them less active or to sedate them.

8 Nearly all states have incorporated laws or procedures on the use of restraints or seclusion for people
9 with developmental and intellectual disabilities. The National Association of State Directors of
10 Developmental Disabilities Services (NASDDDS) website has issued nationally the "State DD Agency
11 Policies on the Use of Restrictive Procedures" at:

12 <http://www.nasddds.org/RestrictiveProcedures/index.shtml>.

13 Hawaii's Developmental Disabilities Medicaid Waiver contains safeguards on restraints and restrictive
14 interventions, such as seclusion, for individuals with intellectual or developmental disabilities (I/DD).

1 The waiver requires that a behavioral support review committee (BSRC) meet quarterly and include as
2 committee members:

- 3 1) a parent of a waiver participant,
- 4 2) a community member with no direct involvement with waiver provider programs,
- 5 3) a Medicaid waiver participant,
- 6 4) a Department of Health facilitator with experience or training in best practices to support
7 behaviors of individuals with developmental disabilities,
- 8 5) a Department of Health staff member from case management with experience in supporting
9 participants with behavior concerns,
- 10 6) a waiver provider who provides at least two services to participants.

11 The Hawaii Developmental Disabilities Division has not been successful in recruiting non-Department
12 of Health members for this committee due to liability concerns. Previous law covering Child Death
13 Review, and Mortality Review for people with developmental and intellectual disability have similar
14 language as this bill in ensuring that participants in the process are not part of civil or criminal
15 proceedings regarding information presented in, or opinions formed as the result of the review, unless
16 disclosure is required by law or court order, or is public information.

17 If this bill becomes law, it will codify Hawaii's system for review of use of restraints and seclusion for
18 people with developmental and intellectual disabilities, and exempt the members of the BSRC
19 committee from liability. Having a fully participatory BSRC will result in increased safety for the
20 vulnerable population of those with developmental or intellectual disabilities.

21 Thank you for the opportunity to testify on this measure.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) REGARDING H.B. NO. 2302, HD 1

DATE: Friday, February 21, 2014

TIME: 1:00 pm

To: Chairman Karl Rhoads and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) regarding the immunity and evidentiary provisions of H.B. No. 2302, HD 1 relating to Behavioral Support Review of Restraints and Seclusion.

Although HAJ initially oppsed the immunity and evidentiary provisions in this bill, I have been in communication with Dr. David Fray who has proposed new language to our association which we are agreeable to.

HAJ initially opposed the evidentiary and immunity provisions on pages 4 and 5 of this measure because they are too broad and vague as currently drafted. Subsection (d), on page 4, makes information held by the department immune from subpoena, discovery or introduction into evidence without the exception for disclosure required by law or court order that is found in subsection (c). Courts should retain the responsibility to manage discovery and introduction of evidence in ways that best accommodate the needs of the proposed program and any pending civil or criminal proceeding. Accordingly, subsection (d) should be amended to include the same exception found in subsection (c) where disclosure or introduction into evidence may be required by law or court order.

Likewise, the immunity provision on page 5 is too broad and vague. It is not clear whether the immunity applies only to the Department's review of data or extends to those

persons whose conduct in restraining or confining disabled children and adults is being studied. As currently drafted, the language “All . . . individuals . . . participating in . . . activities” pertaining to behavioral support reviews of persons with developmental or intellectual disabilities can be read to include the individuals who are doing the mechanical, physical or chemical restraining of the disabled or their confinement. We assume that the purpose of the immunity provision applies to those studying the data and not to those individuals who may be inappropriately administering mechanical, physical or chemical restraint or confinement of disabled persons.

The changes proposed to us are as follows:

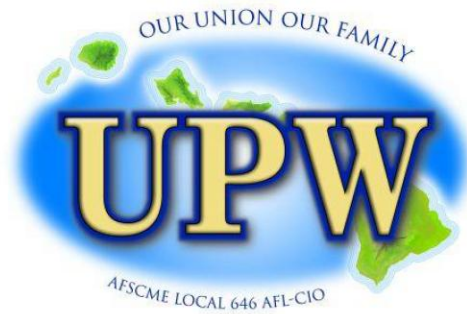
[§321-505] Use of information and records from mortality reviews of deaths of persons with developmental or intellectual disabilities

(d) Information held by the department as a result of a multidisciplinary and multiagency mortality review of the death of a person with developmental or intellectual disabilities conducted under this part shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because it was provided as required by this part.

[§321-506] Immunity from liability. All agencies and individuals participating in multidisciplinary and multiagency mortality reviews of deaths of persons with developmental or intellectual disabilities pursuant to this part shall not be held civilly or criminally liable for providing the information required under this part.

HAI supports these amendments to this bill.

Thank you for the opportunity to testify on this measure. Please feel free to contact me should there be any questions.



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Seventh Legislature
Regular Session of 2014

COMMITTEE ON JUDICIARY
The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair

DATE OF HEARING: Friday, February 21, 2014
TIME OF HEARING: 1:00 PM
PLACE OF HEARING: Conference Room 325

**TESTIMONY ON HB2302 HD1 RELATING TO BEHAVIORAL SUPPORT REVIEW OF
RESTRAINTS AND SECLUSION**

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports the intent of HB2302 HD1, which establishes a behavioral support review process to assess the use of restraints and seclusion for individuals with developmental or intellectual disabilities and provides disclosure, use, review, and immunity from liability provisions with respect to behavioral support review of persons with developmental or intellectual disabilities.

Thank you for the opportunity to testify on this measure.



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
February 21, 2014

The Honorable Karl Rhoads, Chair
House Committee on Judiciary
Twenty-Seventh Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Rhoads and Members of the Committee:

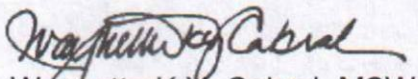
SUBJECT: HB 2302 HD 1– Relating to Behavioral Support Review of Restraints and Seclusion

The State Council on Developmental Disabilities (DD) **SUPPORTS HB 2302 HD1**. The bill establishes authority for a behavioral support review process to assess the use of restraints and seclusion for individuals with developmental or intellectual disabilities, and allow participants exemption from liability for the use and review of information and records and activities pertaining to behavioral support reviews of persons with developmental or intellectual disabilities.

The passage of HB 2302 HD1 would add a new part to Chapter 321 to enable Department of Health DD Division to facilitate a review process of the Behavioral Supports Review Committee (BSRC) to review restraints and seclusion interventions for persons with DD or intellectual disabilities receiving services under the Medicaid Home and Community-Based Services Waiver program. This is a requirement of the Waiver program. Apparently, DD Division has had difficulty meeting this requirement because individuals are reluctant to serve on the Committee due to liability concerns. The bill includes a provision that addresses immunity from liability. With this provision, DD Division would be successful in recruiting members to serve on the BSRC and meet the Waiver program requirements.

Thank you for the opportunity to submit testimony in **support of HB 2302 HD1**.

Sincerely,


Waynette K.Y. Cabral, MSW
Executive Administrator


J. Curtis Tyler, III
Chair

February 21, 2014

Ellen K. Awai
3329 Kanaina Ave.
Honolulu, HI 96815
Awai76@aol.com

TO: Representative Karl Rhoads, Chair of the Judiciary Committee & Members
Hearing on Friday, February 21, 2014, 1:00pm in Room #325

SUBJECT: Testimony HB2302 HD1 - Please support!


I have been a mental health advocate for over a decade with NAMI, the National Alliance on Mental Health, and have a master of science in Criminal Justice Administration (MSCJA). I am a Certified Psychiatric Rehabilitation Practitioner (CPRP) with the U.S. Psychiatric Rehabilitation Association, which has gone international as Psychiatric Rehabilitation Association (PRA) training individuals on the integrated, person- centered recovery model. I have worked for the state's Adult Mental Health Division, training over 130 individuals to help their peers by providing hope and role modeling by sharing their experiences.

Banning seclusions & restraints has been a national movement for a few decades and a review process in Hawaii is definitely needed. People have died from these interventions, which include young children who may not understand why they are being restrained. Some may have a serious emotional or mental health disorder and continue to fight their way out of the restraints to the point of complete exhaustion and death. Individuals in all institutions, whether in care homes, hospitals or jails have rights, and seclusions and restraints should not be a part of their treatment. Temporary intervention could be possible if they are a danger to themselves or others, but then someone needs to check on them frequently or even sit with them till they calm down.

Personally, I have seen many incidents in Hawaii where people whether they have behavioral health issues or are elderly that are bound to wheelchairs and sitting along hospital walls to prevent them from "escaping" in their wheelchairs. These institutes do not even know that there are other options. Someone could be posted at the door, continuous activities could be planned, or even having a certified peer or volunteer could assist in keeping patients occupied. Boredom and depression are the worst things that individuals face, which could lead any individual whether young or old into unhealthy situations that are unsafe.

I have faced this myself in hospitals, where individuals attack one another or cause injury to staff members. Keeping people occupied, like how the Hawaii State Hospital's Psychiatric Rehabilitation Mall did, where classes were provided and individuals seem to have a purpose instead of being tied up on the side or closed off in a room. Hawaii needs to promote an individual's recovery to getting better not traumatize them even more. Please support HB2302 HD1!

Mahalo and Aloha!



Ellen K. Awai, MSCJA, BBA, CPRP, HCPS
Behavioral Health Advocate