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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 01, 2014 12:53 PM
To: HLTtestimony
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Subject: Submitted testimony for HB2302 on Feb 5, 2014 08:35AM

HB2302

Submitted on: 2/1/2014

Testimony for HLT on Feb 5, 2014 08:35AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Ellen Awai	Individual	Support	No

Comments: All individuals have rights and seclusions and restraints should not be a part of their treatment unless they are a danger to themselves or others. This has been a national movement for a few decades. 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." These institutes do not even know that they do have other options. Someone posted at the door, continuous activities to do, or even having a certified peer or volunteer to assist keeping patients occupied. We want to promote an individual's recovery to getting better not traumatize them even more. Please support HB2302!

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February 5, 2014

LATE

The Honorable Della Au Belatti, Chair
House Committee on Health
Twenty-Seventh Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Au Belatti and Members of the Committee:


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

The State Council on Developmental Disabilities (DD) **SUPPORTS HB 2302.** The 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 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.**

Sincerely,


Waynette K.Y. Cabral, MSW
Executive Administrator


J. Curtis Tyler III
Chair

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 2302

DATE: Wednesday, February 5, 2014
TIME: 8:35 am

LATE

To: Chair Della Au Belatti and Members of the House Committee on Health:

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

HAJ opposes 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.

The immunity provision on page 5 is too broad and vague. There are two concerns. First, 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.

Second, as to those studying the data, we are unable to discern the kind of civil or criminal liability they will face that requires broad and absolute immunity, from even grossly negligent and intentional misconduct. The only potential liability we can think of is misuse of the data in a manner that invades the privacy of disabled persons through the disclosure of their identities (which is prohibited in this measure) or the failure to report inappropriate abuse of disabled persons through the use of mechanical, physical or chemical restraints or confinement. We do not believe that the public interest would be served by granting immunity to those who would violate the privacy requirements of this measure or those who would turn a blind eye to obvious abuse of a most vulnerable population that is unable to protect itself.

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