



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
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March 14, 2014

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

Dear Representative Belatti and Members of the Committees:

SUBJECT: SB 2853 SD2 – Relating to Developmental Disabilities Adult Foster Homes


The State Council on Developmental Disabilities (DD) **SUPPORTS SB 2853 SD2**. This bill allows a definition of "related" to include relationships by blood, by marriage, legal guardians, and trustees of the foster adult. Legal guardians, trustees, and relatives may not continue to care for individuals with intellectual/developmental disabilities (I/DD) as a foster home; permits minors with I/DD to age in place under certain conditions; clarifies that certified adult foster homes with dual certification not exceed a total of three individuals with I/DD; and prohibits adult foster homes from dual certification.

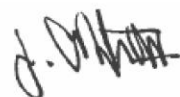
Essentially, SB 2853 SD2 amends Section 321-11.2(a), Hawaii Revised Statutes, by clarifying the conditions for certification of adult foster homes for individuals with I/DD. We are pleased that the bill permits a foster boarding home for minors with I/DD to be dually certified to enable the individual to age in place and remain in the home. We agree that the total number of foster children with I/DD and adults with I/DD in a dually certified home shall not have more than two individuals. However, with the Director of Health's approval, not more than three individuals would be permitted (Act 212, HRS 2013).

We support and appreciate the language to grandfather all certified adult foster homes dually certified as foster boarding homes and in existence as of the effective date of this bill. We understand that the effective date is January 1, 2050, to encourage further discussion and will be amended as the bill moves forward through the legislative process.

Thank you for the opportunity to submit comments in **support of SB 2853 SD2**.

Sincerely,


Waynette K.Y. Cabral, M.S.W.
Executive Administrator


J. Curtis Tyler, III
Chair



LATE

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

In reply, please refer to:
File:

House Committee on Health

S.B. 2853, S.D.2, Relating to Developmental Disabilities Adult Foster Homes

**Testimony of Linda Rosen, M.D., M.P.H.
Director of Health**

March 14, 2014

1 **Department's Position:** The Department is in support of S.B. 2853, S.D. 2, as this bill aims to
2 clarify the requirements of certification of Adult Foster Homes for individuals with developmental
3 or intellectual disabilities.

4 **Fiscal Implications:** There is no cost implication to the Department.

5 **Purpose and Justification:** S.B. 2853, S.D. 2, will amend HRS §321-11.2(a), Hawaii Revised
6 Statutes, to provide clarity of the requirements of certification to obtain a certification for an Adult
7 Foster Home, and to create an exception for dual certification with a foster boarding home for
8 children to foster the child's ability to age in place after attaining the age of eighteen (18). The
9 Department supports the definition of "related" being added in HRS §321-11.2 Section 1 (a) (2).
10 This definition provides much needed clarity for existing and potential certified caregivers to
11 understand the requirements for certification. The Department does not require a related family
12 member to obtain certification; therefore, if someone or some family is willing to become a guardian
13 or obtain a legal form of trusteeship of an individual with developmental or intellectual disabilities
14 and have the person live with them, the Department views this situation similar to a related family
15 member. In Section 2 of S.B. 2853 S.D. 2 the Senate Committee on Ways and Means aims to amend
16 Section 346-17, Hawaii Revised Statutes, specifically to say that "The department shall not certify as

1 a foster boarding home any existing adult foster home that has been certified by the director of
2 health pursuant to section 321-11.2.” While the Department appreciates the Committee’s effort to
3 insert language into Section 346-17, Hawaii Revised Statutes, the intent of the language proposed by
4 the Department in S.B. 2853 is to prevent from being obtained all other types of residential licenses
5 and certifications when there is an existing adult foster home certification in place. The Department
6 recommends that a new paragraph is added after B. (2) to read “An existing adult foster home shall
7 not have dual certification when the certification of the adult foster home precedes dual
8 certification.” The Department is also recommending that subsection (a) (1) and (2) is amended for
9 clarity and to read as a sentence “To be certified, an adult foster home shall house a maximum of
10 two adults with developmental or intellectual disabilities at the same time, who are not related to the
11 foster family. If a certified caregiver is a legal guardian of the foster adult, or a trustee of the foster
12 adult, or is related to the foster adult, then that adult foster home shall house not more than three
13 individuals with developmental or intellectual disabilities at the same time.” The Department is also
14 recommending technical and nonsubstantive amendments to the bill and the bill’s description for
15 clarity and consistency and is attached to this testimony. The attached contains a summary of the
16 department's recommended changes to SB2853 in its entirety.

17 Thank you for this opportunity to testify.

A BILL FOR AN ACT

RELATING TO DEVELOPMENTAL DISABILITIES ADULT FOSTER HOMES.

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

SECTION 1. Section 321-11.2, Hawaii Revised Statutes, is amended to read as follows:

"§321-11.2 **Adult foster homes.** (a) The department of health is authorized to certify adult foster homes for individuals with developmental [~~disabilities~~] or intellectual disabilities requiring [~~such~~] care beyond the individual's eighteenth birthday. "Adult foster home" means a private family home providing care on a twenty-four hour basis [~~for~~] to adults with developmental or intellectual disabilities. To be certified, an adult foster home shall [~~have~~]house [~~not more than~~] a maximum of two adults with developmental or intellectual disabilities at the same time, who are [~~unrelated~~] not related to the foster family. If a certified caregiver is a legal guardian of the foster adult, or a trustee of the foster adult, or is related to the foster adult, then that adult foster home shall house not more than three individuals with developmental

or intellectual disabilities at the same time. For the purposes of this subsection, "related" means related by legal guardianship, trusteeship, blood, marriage, or have a legal relationship between the certified caregiver and the foster adult. The director of health may waive the two-adult limit for certification of that home as an adult foster home; provided that the number of adults with developmental or intellectual disabilities in the certified home shall not exceed three adults with developmental or intellectual disabilities who are unrelated to the foster family.

(b) To accommodate residents of a foster boarding home for children with developmental or intellectual disabilities who reach the age of eighteen years, where the home is defined as a foster boarding home under section 346-16 and certified as a foster boarding home for children under section 346-17, the director of health may waive the two-adult limit for certification of that home as an adult foster home, provided that: (1) the total number of foster children with developmental or intellectual disabilities and adults with developmental or intellectual disabilities in such a dually certified home shall not exceed [~~five~~] three, and (2) no new adults and children may be admitted into the home [~~while there are any foster children residing in the home~~].

This subsection shall not affect the validity of the certification of any adult foster home that is defined as a foster boarding home under section 346-16, certified as a foster boarding home for children under section 346-17, and in existence as of the effective date of this Act.

An existing adult foster home shall not have dual certification when the certification of the adult foster home precedes dual certification.

~~(b)~~ (c) The rules of the department of human services adopted under authority of section 346-17, which prescribe the standards of conditions and competence of operation of child foster boarding homes shall apply to adult foster homes. Notwithstanding chapter 91, to the contrary, the rules shall be considered adopted by the department of health on July 1, 1986, for the purpose of regulating adult foster care homes and shall be valid until the department of health adopts rules pursuant to chapter 91. The department of health shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

~~(e)~~ (d) Rate of payment for adult foster homes is to be determined on the same basis as domiciliary care homes as provided under section 346-53."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2050.

Report Title:

Developmental Disabilities Foster Homes

Description:

~~Prohibits legal guardians, trustees, and relatives from continuing to care for individuals with intellectual or developmental disabilities in a certified foster home.~~ Permits minors with intellectual or developmental disabilities to age in place under certain conditions in certified adult foster homes where such minors are not related to the foster family. Defines "related" as related by legal guardian, trusteeship, blood, [or] marriage or having a legal relationship between a certified caregiver and a foster adult. Clarifies that certified adult foster homes dually certified as foster boarding homes shall not exceed a total of three individuals with intellectual or developmental disabilities. Does not impact the validity of certification of adult foster homes that are dually certified as foster boarding homes and in existence as of the effective date of this Act. Takes effect on 1/1/2050. (SD2)

NEIL ABERCROMBIE
GOVERNOR



PATRICIA McMANAMAN
DIRECTOR

BARBARA YAMASHITA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

LATE

March 12, 2014

TO: The Honorable Della Au Belatti, Chair
House Committee on Health

FROM: Barbara Yamashita, Deputy Director

SUBJECT: **S.B. 2853, S.D.2 - RELATING TO DEVELOPMENTAL
DISABILITIES ADULT FOSTER HOMES**

Hearing: Friday, March 14, 2014, 9:00 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of this bill is to prohibit legal guardians, trustees, and relatives from continuing to care for individuals with intellectual or developmental disabilities in a certified foster home; defines "related"; and permits minors with intellectual or developmental disabilities to age in place under certain conditions. This bill will also prohibit the Department of Human Services from certifying as a foster boarding home under section 346-17, Hawaii Revised Statutes (HRS), a home for any child needing placement if the home is an existing foster home certified by the director of health pursuant to section 321-11.2, HRS.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly opposes the amendments made to this bill. The amendments in the S.D. 1 and S.D. 2 of this bill will directly affect the ability of our Child Welfare Services (CWS) to provide appropriate and supportive placements with relatives and permanency for foster

children. The amendment to HRS 346-17 in Section 2 of this bill will prohibit the DHS from certifying as a CWS Foster Homes, under section 346-17, Hawaii Revised Statutes (HRS), a home for a foster child needing placement if the home is certified as a Developmental Disabilities (DD) Adult Foster Home by the Department of Health (DOH) pursuant to section 321-11.2, HRS. The proposed amendment in Section 1 to HRS 321-11.2(b) would prohibit any new placements in currently dual certified homes.

The amendments to this bill prohibit the dual certification of a home as a DD Adult Foster Home and as a CWS Foster Homes, including those currently made on a case-by-case, child-specific basis. Currently, on a case-by-case basis, a foster child could be placed with a relative who is a DD Adult Foster Home caregiver if BOTH DD and CWS deem the situation safe, appropriate and in the best interest of the adult residents in the DD home and the foster child.

The S.D. 1 also prohibits any new placements in currently homes currently dually certified. Children with developmental or intellectual disabilities may also become a child in foster care during their life. CWS seeks appropriate placements with skilled caregivers. Sometimes these placements may be the same licensed/certified caregivers who care for adults with developmental or intellectual disabilities. CWS works towards reunification, however, not all children are able to return home. We maintain strong efforts to stabilize children in foster care and minimize the number of placements and trauma associated with moves and changes in caregivers. We would hope that children with developmental or intellectual disabilities who enter foster care will be adopted or have legal guardians who will be able to care for these children in the same home as they become adults. We would benefit from the flexibility for these caregivers to possibly be both licensed/certified child and adult caregivers. For example, a child with developmental or intellectual disability may enter foster care at

age 16. The most appropriate placement may be with a licensed/certified adult care home provider. This would allow the child to be placed there, and if the child cannot be reunified with his or her family, be able to remain with the same skilled and caring family when they become an adult and continue to require the level of care provided in this setting.

The DHS respectfully requests the Legislature to not approve changes to HRS 321-11.2 and HRS 346-17 that affect appropriate and supportive placements with relatives and permanency for foster children. The DHS will work with the DOH to propose amending language that is agreeable to both departments.

Thank you for the opportunity to testify on this bill.



HAWAII DISABILITY RIGHTS CENTER

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Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org

THE HOUSE OF REPRESENTATIVES THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2014

Committee on Health Testimony in Opposition to S.B. 2853, SD2 Relating to Developmental Disabilities Adult Foster Homes

**Friday, March 14, 2014, 9:00 A.M.
Conference Room 211**

Chair Belatti and Members of the Committee:

The Hawaii Disability Rights Center testifies in opposition to this bill. This bill originally appeared to be improperly motivated by a desire to overturn the placement of two children who were represented by this office. Both of these children were regarded as “high end” children, which means that they presented very difficult behaviors along with severe intellectual or cognitive disabilities. They were children who were very hard to place in a foster home. One of the children experienced multiple placements. The other was in an institutional placement prior to the time he was placed with his current caregiver.

Against this backdrop, the adult foster home in question agreed to accept these children. This was and is perfectly legal inasmuch as nothing in the law prevents a home from being certified to care for both, so long as other health and safety requirements of both the Department of Health and the Department of Human Services are met. In fact both Departments have fairly stringent requirements that must be met. Despite the fact that this caregiver met all the requirements and clearly was creating a wholesome family environment for these children, the Department of Health, via a combination of delay and bureaucratic inertia did its best to attempt to delay and derail the placement of these children. Our office intervened on behalf of these children and eventually negotiated a successful outcome whereby all required licenses and certifications were obtained.



In light of that, we were rather shocked to see this attempt by the Administration to overturn the statutes in question and involve the legislature with its continued efforts to force these children to vacate the home. In view of the difficulty of finding a community placement for these children and in light of the limited capacity that exists in our community, a more enlightened Department of Health might have been thankful that there are individuals who are willing to step forward and act as caregivers. Instead, their response had been the opposite and they have tried to thwart this successful placement every chance they have had. This bill represented just the latest attempt in that line.

Fortunately, the Senate Version of the bill included a grandfather provision so that this particular home can retain its license and continue to be dually certified. For that we are grateful. The children we represent will not need to be uprooted and displaced. Yet, beyond the limited interests of our clients, we fail to see where this is a valid public policy proposal. The Department of Health has offered no compelling reason for a blanket prohibition on caring for adults and children. As Senator Chun-Oakland observed at the Senate Health Committee hearing, most families are composed of children and adults. Each case needs to be assessed on its individual merits. Quality caregivers are at a premium and if an individual has a house and a heart that is big enough to take care of adults and children with developmental disabilities, they should be encouraged and not banned.

Thank you for the opportunity to testify in opposition to this measure.

LATE

House Committee Health Chair Della Au Belatti, Vice Chair Dee Morikawa and Committee Members

RE: SB 2853 SD2 Relating to Developmental Disabilities Adult Foster Homes

Hearing Date: March 14, 2014

Time: 9:00 AM

Place: Room 329

My name is Wade Wolfe and I live and work on the Big Island of Hawaii. I am a graduate of U.H. Hilo and am currently completing my final semester of graduate school at U.H. Manoa. I work with foster children and see the limited placement options.

I am testifying on SB 2853 SD2 and respectfully ask that you **OPPOSE** this bill in its current form.

I see no legitimate reason to prohibit legal guardians, trustees, or relatives from continuing to care for individuals with intellectual or developmental disabilities, unless there is a true concern (e.g., neglect, abuse, ect.). In fact, I believe that it should be considered the initial option. Placing an individual with a family who has blood, marriage, or a prior legal relationship can have many obvious benefits.

In conclusion, limiting an individual's placement options does not make sense considering the lack of current available placement options.

Mahalo for the opportunity to submit my testimony in opposition to SB 2853 SD2.

Respectfully submitted,

Wade Wolfe

Individual Testimony

808 937-7413