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1 "Director" means the director of health or the director's
2 designated representative.

3 "Intellectual disability" means significantly sub-average
4 general intellectual functioning resulting in or associated with
5 concurrent moderate, severe, or profound impairments in adaptive
6 behavior and manifested during the developmental period.

7 "Person with developmental or intellectual disabilities"
8 means a youth or an adult with a developmental or intellectual
9 disability.

10 "Restraints" means the methods of restricting a person's
11 freedom of movement by holding a person (manual or physical
12 restraint); using a mechanical device; or using a psychotropic
13 medication prescribed without the appropriate Diagnostic and
14 Statistical Manual (DSM) diagnosis or prescribed on an as needed
15 basis (chemical restraint). A restraint does not include briefly
16 holding a person without undue force, in order to calm or
17 comfort the person, or holding a person's hand to safely escort
18 the person from one area to another.

19 "Seclusion" means any involuntary confinement to a room or
20 area where one is physically prevented from leaving.

21 **§321- Access to information.** (a) Upon written request
22 of the director, all providers of residential supports, and
23 state and county agencies, shall disclose to the department and

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1 to those individuals appointed by the director to participate in
2 the behavioral support review of a person with developmental or
3 intellectual disabilities, the circumstances of restraints or
4 seclusion used for a person with developmental or intellectual
5 disabilities to allow the department to conduct
6 multidisciplinary reviews of restraints or seclusion used for
7 persons with developmental or intellectual disabilities pursuant
8 to section 321-31 and this part.

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

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

15 **§321- Use and review of information and records and**
16 **activities pertaining to behavioral support review of persons**
17 **with developmental or intellectual disabilities.** (a) Except as
18 otherwise provided in this part, all information and records
19 acquired by the department during its multidisciplinary,
20 multiagency reviews of restraints or seclusion of persons with
21 developmental or intellectual disabilities pursuant to this part
22 shall be kept confidential and may be disclosed only as
23 necessary to carry out the purposes of this part.

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

6 (c) No individual participating in the department's
7 multidisciplinary review of the restraints or seclusion of a
8 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
11 meetings of the multidisciplinary review of restraints or
12 seclusion. Nothing in this subsection shall be construed to
13 prevent a person from testifying to information obtained
14 independently of the department's multidisciplinary behavioral
15 support review, or that is public information, or where
16 disclosure is required by law or court order.

17 (d) Information held by the department as a result of a
18 multidisciplinary review of the restraints or seclusion of a
19 person with developmental or intellectual disabilities conducted
20 under this part shall not be subject to subpoena, discovery, or
21 introduction into evidence in any civil or criminal proceeding,
22 except that information otherwise available from other sources
23 shall not be immune from subpoena, discovery, or introduction

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1 into evidence through those sources solely because it was
2 provided as required by this part.

3 **§321- Immunity from liability.** All agencies and
4 individuals participating in multidisciplinary reviews of
5 restraints or seclusion of persons with developmental or
6 intellectual disabilities pursuant to this part shall be immune
7 from civil or criminal liability for the use and review of
8 information and records and activities pertaining to behavioral
9 support reviews of persons with developmental or intellectual
10 disabilities as required under this part."

11 SECTION 2. This Act shall take effect upon its approval.

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INTRODUCED BY: _____



14

BY REQUEST

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JAN 21 2014

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Report Title:

Behavioral Support Review of Restraints and Seclusion

Description:

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.

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO BEHAVIORAL SUPPORT REVIEW OF RESTRAINTS AND SECLUSION.

PURPOSE: Establishes authority for a behavioral support review process to conduct multidisciplinary reviews of restraints or seclusion of persons with developmental or intellectual disabilities to reduce the risk of harm or death to persons with developmental or intellectual disabilities, and to exempt those who participate in the reviews from liability for the use and review of information and records and activities pertaining to behavioral support review of persons with developmental or intellectual disabilities.

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

JUSTIFICATION: Hawaii's Developmental Disabilities Medicaid Waiver contains safeguards concerning restraints and restrictive interventions such as seclusion for individuals with intellectual or developmental disabilities (I/DD). The waiver requires that a behavioral support review committee (BSRC) meet quarterly and include as committee members: a parent of a waiver participant, a community member with no direct involvement with waiver provider programs, a waiver participant, Department of Health (DOH) facilitator with experience or training in best practices to support behaviors of individuals with developmental disabilities, a DOH staff member from case management with experience in supporting participants with behavior concerns, and a waiver provider who provides at least two services to participants. The organizer of this

committee has not been successful in recruiting members for this committee due to liability concerns.

Nearly all states have incorporated laws or procedures for the use of restraints or seclusion for people with developmental and intellectual disabilities. To obtain a national perspective, see the National Association of State Directors of Developmental Disabilities Services (NASDDDS) website entitled "State DD Agency Policies on the Use of Restrictive Procedures:"
<http://www.nasddds.org/RestrictiveProcedures/index.shtml>

This measure will codify Hawaii's system for review of use of restraints and seclusion for people with developmental and intellectual disabilities, and exempt the members of the BSRC committee from liability.

Impact on the public: Improved safety for persons with developmental or intellectual disabilities.

Impact on the department and other agencies: This bill will allow the DOH, Developmental Disabilities Division (DDD) to conduct BRSC meetings with recommended committee members as described earlier. The bill will also allow participants an exemption from liability. Currently due to possible liability from serving as a member of the committee, critical reviewers do not volunteer for the BRSC.

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM DESIGNATION: HTH-501
OTHER AFFECTED

AGENCIES: None.

EFFECTIVE DATE: Upon approval.