



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

In reply, please refer to:
File:

Senate Committee on Health

SB 2855, Making an Emergency Appropriation to the Department of Health for the Developmental Disabilities Division

Testimony of Gary L. Gill
Acting Director of Health

February 3, 2014

1 **Department's Position:** The Department of Health strongly supports this emergency administrative
2 measure to provide additional funding resources for the Developmental Disabilities Division's Home
3 and Community Based Services (HCBS) 1915c Medicaid Waiver program to provide new services
4 during this fiscal year for adults and children living in Hawaii as citizens of Compact of Free
5 Association (COFA) countries per federal court injunction in an appeal by the State of Hawaii.

6 **Fiscal Implications:** The fiscal implications to the Department of Health are anticipated to be \$500,000
7 for this fiscal year. Additional costs of \$2,000,000 are expected to be incurred in FY2015.

8 **Purpose and Justification:**

9 The Developmental Disabilities Division was informed by the Attorney General's office on January 16,
10 2014 that COFA citizens must be provided community based services with 100% State funds from the
11 Department of Health to comply with a federal court directive to the Hawaii Department of Human
12 Services' Medicaid program. This new development will allow the Department to immediately make
13 eligible 47 individuals and provide HCBS services. The Department of Health defers to the Department
14 of the Attorney General for interpretation of the legal directive.

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

Promoting Lifelong Health & Wellness



HAWAII DISABILITY RIGHTS CENTER

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THE SENATE THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2014

Committee on Health Testimony in Support of S.B. 2855 Making An Emergency Appropriation to the Department of Health For The Developmental Disabilities Division

**Monday, February 3, 2014, 1:30 P.M.
Conference Room 229**

Chair Green, and Members of the Committee:

The Hawaii Disability Rights Center testifies in support of this bill. The plight of COFA nation individuals has been well documented over the past several years. We realize that prior to the court decision referenced in this bill they were not regarded as Medicaid eligible and so therefore not included in the DD Medicaid Home and Community Based Waiver. As a result of the court case, more funds need to be appropriated so that they can be served.

We would also like to urge the Legislature to look further into the budget of the Developmental Disabilities Division to see if they are requesting sufficient sums of money to fulfill their requirements under the law. A few years ago our office entered into a Settlement Agreement with the Department of Health (Hawaii Disability Rights Center vs. State of Hawaii Civil No. 03-00524, also known as the Makin case) wherein they were obligated to exercise their best efforts to annually assess the needs of the individuals in the waiver program and seek the resources they needed to properly serve them in the community. The actions of the Division in the past few years have raised questions about whether they are complying with the Agreement and whether they are truly seeking the resources they need from the legislature.

For example, recent actions have raised questions. The Division is currently engaged in a Rulemaking process which specifically exempts them from providing services if they fail to secure them from the legislature. Additionally, the Administration has introduced Concurrent Resolutions (SCR 15 and HCR 17) seeking to narrow the definition of



“developmental disability” because they claim they are not receiving sufficient monies to serve the entire population. We believe that the DD Division is likely acting in good faith to put forth responsible fiscal proposals. However, we have reason to believe that either the Department of Health or perhaps the Governor, via the Department of Budget and Finance is preventing those requests from appearing in the Executive Budget request that is submitted to the legislature. In either case, we question whether they are complying with the spirit as well as the letter of the Makin Settlement Agreement.

Since the legislature is being called upon to pass an emergency appropriation, we feel it is a good opportunity to examine whether the Department is submitting a budget request which is adequate to fulfill its legal requirements.

Thank you for the opportunity to testify in support of this measure.



Community Alliance for Mental Health

February, 3, 2014

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To: Senate Health Committee
Re: SB 2855

Aloha Senator Green and the members of the committee,

On behalf of the Community Alliance for Mental Health along with United Self Help we support passage of SB 2855.

The developmentally disabled are perhaps the most vulnerable members of our community. We feel that they deserve the support of the people of Hawai'i.

Scott Wall
VP/Legislative Advocate
Community Alliance for Mental Health



STATE OF HAWAII
STATE COUNCIL
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February 3, 2014

The Honorable Josh Green, Chair
Senate Committee on Health
Twenty-Seventh Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Green and Members of the Committee:

SUBJECT: SB 2855 – Making an Emergency Appropriation to the Department of Health for the Developmental Disabilities Division

The State Council on Developmental Disabilities (DD) **SUPPORTS SB 2855**. The bill authorizes an emergency appropriation for FY 2013-2014 \$500,000 from general funds to the Department of Health, for ongoing services provided by the Developmental Disabilities Division.

The Department of Health DD Division was appropriated funds for FY 2013-2014. However, due to a preliminary injunction issued by the Honorable Michael Seabright in his Order Granting Plaintiffs' Motion for Preliminary Injunction filed December 13, 2010 in Korab, et al. v. McManaman, et al., Civil No. 10-00483 JMS/KSC (USDC, Dist. of Hawaii), the DD Division is now obligated to provide Medicaid Title XIX program services to the Compact of Free Association (COFA) population who are eligible for DD services. The emergency appropriation will address the needs of 47 COFA individuals who are estimated to be eligible for services from DD Division while complying with the preliminary injunction.

Without the emergency appropriation, DD Division would not be able to provide services to the eligible COFA individuals. Consequently, they may be forced to tap into their FY 2013-2014 appropriation which would impact current individuals receiving Medicaid Title XIX program services, and potentially create a wait list for services that would jeopardize the Makin Settlement Agreement.

Thank you for the opportunity to submit testimony in **support of SB 2855**.

Sincerely,


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


J. Curtis Tyler III
Chair